Supreme Court, U.S.
FILED

No. 02-835 DEC 8 2003

In The

Supreme Court of the United States

EDGEWOOD VILLAGE, INC. and EDGEWOOD NEIGHBORHOOD ASSOCIATION, INC.,

Petitioners,

v.

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN and GRACIE WHITE,

Respondents.

On Petition For A Writ Of Certiorari To The Connecticut Supreme Court

PETITION FOR A WRIT OF CERTIORARI

THOMAS E. CROSBY, ESQ.
Counsel for Petitioners
CROSBY AND CRONAN, LLC
1291 Boston Post Rd.,
Suite #201
Madison, Connecticut 06443
(203) 245-0332

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

86 pp

STATEMENT OF QUESTIONS PRESENTED

1. Does an adjoining property owner have standing to challenge an improperly noticed public hearing by a municipal housing authority?

2. Were an adjoining property owner's due process rights violated by an admittedly illegal notice of a public hearing by a municipal housing authority to acquire the property next door?

3. Were the adjoining property owners' First Amendment rights of assembly and free speech abridged by the Connecticut Supreme Court's finding that the property owner was not classically aggrieved and had no standing to challenge the municipal housing authority's acquisition of public housing, where the legal notice admittedly did not comply with the statutory requirements (Connecticut General Statute §8-44)?

RULE 29.6 STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioners state that neither Edgewood Village, Inc. nor Edgewood Neighborhood Association, Inc. have any parent companies or non-wholly owned subsidiaries.

TABLE OF CONTENTS

	Page
STATEMENT OF QUESTIONS PRESENTED	i
RULE 29.6 STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	1
STATEMENT	2
A. Acquisition of 145 West Park Avenue	3
B. The Superior Court Finding of Defective Legal Notice	4
C. Dismissal for Lack of Standing	6
D. Connecticut Supreme Court's Decision	7
REASONS FOR GRANTING THE PETITION	9
A. The Connecticut Supreme Court's Decision Allows Local Agencies to Ignore Public Hearing Requirements	9
B. Petitioners' First Amendment Rights Have Been Denied By the Connecticut Supreme Court's Decision	13
CONCLUSION	15

TABLE OF AUTHORITIES

Page

CASES

Edgewood Village, Inc. et al. v. Housing Authority of the City of New Haven et al., 265 Conn. 280 (2003) 1

Grannis v. Ordean, 234 U.S. 385 (1914) 9

Griswold v. Connecticut, 381 U.S. 479 (1965) 14

In Re Primus, 436 U.S. 412 (1978) 14

Hague v. C.I.O., 307 U.S. 496 (1939) 13

Mullane v. Central Hanover Tr. Co., 339 U.S. 306 (1956) 9, 10, 11

NAACP v. Button, 371 U.S. 415 (1963) 14

Schneider v. New Jersey, 308 U.S. 147 (1939) 14

Schroeder v. City of New York, 371 U.S. 208 (1962) 11

Stanley v. Georgia, 394 U.S. 557 (1969) 15

Terminiello v. Chicago, 337 U.S. 1 (1949) 14

Walker v. Hutchinson City, 352 U.S. 112 (1956) 12, 13

STATUTES

28 U.S.C. §1257 1

Connecticut General Statute §8-44 ..... 2, 3, 5

CONSTITUTION

United States Constitution, First Amendment 1, 13, 14

United States Constitution, Fourteenth Amendment ..... *passim*

TABLE OF AUTHORITIES – Continued

Page

OTHER

Connecticut Joint Standing Commission Hearings, Judiciary and Government Function, Pt. 2, 1957 Session 3

John O. McGinnis, *The Once and Future Property-Based Vision Of the First Amendment*, 63 U.Chi L. Rev. 49, 58 (1996) 13

Kansas Public Act 26-202 12

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Connecticut Supreme Court (App., *infra*, 1-23) is reported at 265 Conn. 280. The opinion of the trial court dated April 23, 2002 (App., *infra*, 24-34) is unreported.

JURISDICTION

The Connecticut Supreme Court released its official decision in *Edgewood Village, Inc. et al. v. Housing Authority of the City of New Haven, et al.*, 265 Conn. 280 (2003) on August 5, 2003. Petitioner's timely Motion for Reconsideration En Banc was denied on September 9, 2003. (App., *infra*, 59). This Court has jurisdiction under 28 U.S.C. §1257 to review the Connecticut Supreme Court's decision on a writ of certiorari.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Due Process Clause of the Constitution provides in relevant part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; * * * " U.S. CONST. amend. 14, sec. 1.

The First Amendment states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech,

> or of the press; or the right of the people peaceably to assemble and to petition the Government for redress of grievances.

The relevant provision of Connecticut General Statutes §8-44, is reproduced at App., *infra*, 61-63.

STATEMENT

This case raises the important question of whether a private property owner has a right to challenge a municipal housing authority's failure to follow a statutorily prescribed public hearing process prior to the acquisition of an adjoining property. This case also presents an important question whether the Connecticut Supreme Court has correctly decided that a property owner has no legally cognizable interest protected under the Due Process Clause of the 14th Amendment or under the First Amendment, the former being in direct conflict with the Supreme Court's decision in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1956) and its progeny.

Chapter 128 of the Connecticut General Statutes sets forth a statutory framework for creating a Department of Economic Development. This Department oversees various municipal housing authorities which encourage the creation of low-income rental housing and other projects. Connecticut General Statute §8-44 empowers municipal housing authorities such as the respondent to acquire property for the site of a proposed housing project after the authority holds a public hearing concerning a proposed site, notice of which is published in a local newspaper at specified intervals prior to the hearing.

The legislative history of Connecticut General Statute §8-44 reveals that a public hearing would provide an open forum to discuss proposed changes to a neighborhood before any redevelopment occurs. Connecticut Joint Standing Committee Hearings, Judiciary and Governmental Function, Pt. 2, 1957 Session, p. 533. The goal of such a hearing is to afford neighborhood residents a chance to speak out with the understanding that the housing authority "will listen to them" and "public opinion would be strength enough." *Id.* at p. 533, remarks of Senator Theodore Lynch and Representative Fahey. (App., *infra*, 11, footnote 9).

A. Acquisition of 145 West Park Avenue

On March 1, 1997 and March 8, 1997, the Housing Authority of the City of New Haven ("Housing Authority" or "HANH") published legal notices for a March 11, 1997 public hearing "to receive public comment on the potential acquisition by the Authority of an existing 1-unit property at 145 West Park Avenue." (App., *infra*, 64-65). Admittedly, the legal notices did not comply with Connecticut General Statute §8-44 in form or substance[1].

The petitioners are both non-profit corporations. Edgewood Village, Inc. ("Edgewood") owns 139 West Park Avenue which is adjacent to 145 West Park Avenue.

---

[1] The first legal notice had to be published "no less than ten days" prior to the hearing and was not. In addition, seven (7) of the eight (8) previous legal notices by HANH all specified the purpose of the acquisition of units "for development of federally subsidized low-income housing" which was not included in the legal notice for 145 West Park Avenue.

Edgewood Village, Inc. restores and maintains low and moderate-income housing in the Edgewood neighborhood area of New Haven, Connecticut. Edgewood Neighborhood Association, Inc. (collectively "Edgewood"), also a non-stock, non-profit corporation, is dedicated to preserve and advance the Edgewood neighborhood area of New Haven, Connecticut. Because of the deficiencies in the legal notices, Edgewood did not appear or participate at the public hearing on March 11, 1997.

On March 11, 1997, the Housing Authority voted to acquire 145 West Park Avenue, New Haven, Connecticut. As soon as Edgewood learned of HANH's acquisition, it obtained an *ex parte* injunction prohibiting the rental of 145 West Park Avenue by HANH until its claims regarding the defective legal notice were resolved. After determining that Edgewood had standing to challenge HANH's acquisition, the Connecticut Superior Court on October 27, 1997 dismissed Edgewood's lawsuit for improper service of process ("Edgewood I"). Immediately, HANH rented 145 West Park Avenue to the co-respondent, Gracie White. Edgewood filed a second action on October 29, 1997 ("Edgewood II"). The respondents then removed the case to the United States District Court, but the matter was remanded to state court on September 29, 1998.

B. The Superior Court Finding of Defective Legal Notice

Upon remand to the state court, Edgewood added Gracie White, the tenant at the property, as a party to the lawsuit. Ms. White moved to dismiss Edgewood's lawsuit for lack of subject matter jurisdiction. In particular, Ms.

White asserted that Edgewood had no standing to challenge the Housing Authority's acquisition of 145 West Park Avenue, New Haven, Connecticut. A similar motion by the Housing Authority in Edgewood I had presented the same claim and failed. Nonetheless, on May 24, 2000, the Connecticut Superior Court concluded that Edgewood had standing under the principles of classical aggrievement because its right to attend and participate at a properly noticed public hearing had been injuriously affected by the improper legal notice.

The respondents next moved for summary judgment by motion dated July 26, 2000. Edgewood responded by seeking discovery of the previous legal notices for other properties acquired by the Housing Authority within the past few years. As noted above, seven (7) out of the previous eight (8) legal notices referenced a "possible acquisition by the Authority of the following site **for development of federally subsidized low-income housing**." This language was conspicuously absent in the legal notice for 145 West Park Avenue. (App., *infra*, 64-65). Because there were not ten (10) clear days between the March 1, 1997 legal notice and the March 11, 1997 public hearing, the trial court denied the respondents' joint motion for summary judgment.

Edgewood then filed its own motion for summary judgment asserting that the improper legal notice deprived the Housing Authority of its jurisdiction to act at its meeting on March 11, 1997. The Trial Court decided that the notice provisions were defective in light of the statutory requirements of Connecticut General Statute §8-44. It found that Edgewood was entitled to proceed on the relief portion of its lawsuit and recommended that Edgewood file an amended complaint clarifying its relief.

C. Dismissal for Lack of Standing

The issue of relief was then presented to the Trial Court on October 1, 2001. The respondents objected to Edgewood's amended complaint which sought, *inter alia*, an injunction against the use of 145 West Park Avenue by the Housing Authority. Edgewood argued that because of the defective legal notice, HANH never had a right to acquire the property in the first place. Respondents urged the court to order a new public hearing.

On December 27, 2001, the trial judge denied Edgewood's motion for summary judgment and again revisited the issue of standing. In particular, the Trial Court pointed to the amended prayer for relief as a reason to readdress Edgewood's classical aggrievement. (See App., *infra*, 49). This approach ignores the principle that standing is not determined by the relief sought.

The Trial Court (Robinson, J.) invited all counsel to submit simultaneous briefs or other supporting data relative to the issue of standing. The Court acknowledged that no fewer than three (3) coordinate judges of the Superior Court had previously found Edgewood classically aggrieved.

On January 30, 2002, Edgewood submitted the Affidavit of Philip W. Ball, a licensed real estate appraiser and attorney. Edgewood also filed an Affidavit of Daniel Greer, President of Edgewood Village, Inc., the owner of 139 West Park Avenue. Attorney Ball's affidavit concluded that HANH's acquisition of 145 West Park Avenue for federally subsidized low-income housing would have an adverse effect on neighborhood property values, including 139 West Park Avenue. The Affidavit of Daniel Greer asserted that he believed the Housing Authority routinely failed to

adequately supervise and maintain their properties. Because of the defective legal notice, he was unable to present safety, maintenance and property value concerns at the March 11, 1997 public hearing.

On April 23, 2002, the Trial Court (Robinson, J.) issued its Memorandum of Decision, RE: Subject Matter Jurisdiction which dismissed Edgewood's lawsuit. (App., *infra*, 24-34.) The Trial Court concluded that Edgewood was not classically aggrieved because its interest(s) in a legally noticed public hearing "go to the concerns of the general community at large . . . " (App., *infra*, 34.) The Trial Court concluded that Edgewood had failed to demonstrate that a violation of Connecticut General Statute §8-44 affected Edgewood in some personal and specific manner. Yet, the petitioners ask this Court: If the adjoining property owner, whose property value is in jeopardy, does not have a specific personal and legal interest in the outcome of the acquisition of the property next door, who does?

D. Connecticut Supreme Court's Decision

On August 5, 2003, the Connecticut Supreme Court affirmed the Trial Court's judgment. Edgewood had argued, and still maintains, that the invalid legal notice vitiated all actions taken by the Housing Authority on March 11, 1997. Edgewood maintains that the **Housing Authority** lacked jurisdiction to acquire 145 West Park Avenue in the first place because of the defective legal notice. The Supreme Court of Connecticut soundly rejected that claim. (App., *infra*, 8-9.)

The Connecticut Supreme Court reasoned that because the state's municipal housing legislation did not

envision an automatic statutory right of appeal from the Housing Authority's action, a defect in the statutorily required legal notices were of no consequence. (App., *infra*, 12-14.) Edgewood's procedural due process rights, under this analysis, have no value. According to the Connecticut Supreme Court, because the legislature created no statutory right to appeal, there is no classical aggrievement or right to challenge an improperly held public hearing. This reasoning makes classical aggrievement synonymous with statutory aggrievement. Moreover, if a given state legislature requires a public hearing, but the hearing procedures are ignored, no one, not even the adjoining property owner, may challenge the process in court. In essence, as the Supreme Court concluded:

> Indeed, the plaintiffs merely were precluded from being able to voice their opinion about a matter in which they had no legal right to affect the outcome.
>
> App., *infra*, 20

Yet, this reasoning undermines the very purpose behind the 14th Amendment's guarantee of due process: the right to be heard! Taking the majority's decision a step further, no property owner would ever have standing to contest a Housing Authority's acquisition of property, even if the authority decided to hold no public hearing at all. See Justice Borden's concurrence. (App., *infra*, 20-23). Clearly, the Connecticut Supreme Court's decision eviscerates the public hearing requirements of any statute and denies its participant's due process of law.

REASONS FOR GRANTING THE PETITION

The right to be heard is the cornerstone of due process. *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). As this Supreme Court noted in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306, 315 (1950): "[t]his right to be heard has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest."

The Connecticut state legislature adopted a municipal housing scheme which envisioned notice to the public prior to condemnation of local properties for public housing. The goal was to involve neighborhood residents in the process of creating public housing. Here, the legal notice was admittedly deficient. It did not contain an adequate description of the subject matter of its March 11, 1997 public hearing. It was not published in a timely manner as prescribed by statute. Consequently, the adjacent landowner, Edgewood Village, Inc. and the neighborhood association, Edgewood Neighborhood Association, Inc. did not receive notice of the matter being considered on March 11, 1997 and did not attend. Neither petitioner was afforded the right to decide whether "to appear or default, acquiesce or contest." Yet, the Connecticut Supreme Court has dismissed petitioners' claims.

A. The Connecticut Supreme Court's Decision Allows Local Agencies to Ignore Public Hearing Requirements

The Supreme Court has universally upheld the concept of proper legal notice as necessary to satisfying the requirements of the Fourteenth Amendment. In *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950), this Court

questioned the sufficiency of statutory notice by publication for known beneficiaries of trusts established under New York Banking Law. In *Mullane*, publication to trust beneficiaries took place by legal notices in a local newspaper. After the filing of a petition for settlement of accounts, the trust company became the guardian and attorney for all non-appearing beneficiaries. *Id.* at p. 310. The appellant objected to the notice as inadequate under the due process clause of the Fourteenth Amendment. The Appellate Division of the New York Supreme Court upheld the notice as sufficient and affirmed settlement of all questions involving the management of the trust.

The United States Supreme Court reversed and found the newspaper publication inadequate to apprise known beneficiaries of their rights saying:

> "Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper's normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when, as here, the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention."
>
> 339 U.S., at 315

The Connecticut Supreme Court's decision here is in direct conflict with *Mullane* and its progeny. As is evident from the legal notice published by the Housing Authority, no indication is provided whatsoever that the subject property will become federally subsidized low-income housing. (App., *infra*, 64-65). The Connecticut Supreme Court

concludes that Edgewood was "merely . . . precluded from being able to voice their opinion about a matter. . . . " (App., *infra*, 20). Yet, even upon the chance that Edgewood could have seen the newspaper publication here, the body of the notice failed to adequately inform Edgewood of the nature of the matter pending. This result is in direct conflict with the holding in *Mullane v. Central Hanover Tr. Co.*, 339 U.S. 306 (1950).

Subsequent decisions interpreting *Mullane* agree. In *Schroeder v. City of New York*, 371 U.S. 208 (1962), the Supreme Court held that the newspaper publications and posted notices did not satisfy the requirements of the Due Process Clause of the Fourteenth Amendment. In *Schroeder*, the New York City Water Supply Act required legal notice of the City's decision to divert a portion of a river 25 miles upstream from the appellant's home. Legal notices were published in two (2) newspapers and 22 notices were posted on trees and poles along a seven to eight mile stretch of the river in appellant's vicinity. *Id.* at p. 210. After the appellant failed to file an appeal within three (3) years, she belatedly filed an equitable claim for damages. Reversing the New York Court of Appeals, this Court concluded that the notice "did not measure up to the quality of notice which the Due Process Clause of the Fourteenth Amendment requires." *Schroeder*, *supra*, at p. 211.

Applying this holding to the facts at hand, the Connecticut Supreme Court has engaged in a complicated analysis of standing to justify dismissal of petitioners' lawsuit. Equating statutory standing with classical aggrievement, the Connecticut Supreme Court concludes that since Edgewood could not appeal the decision of the Housing Authority to court, it should not be allowed to

challenge in court the admittedly deficient notice of HANH's public hearing. Yet, this result undermines the very purpose of the public hearing in the first place: to encourage public debate about the Housing Authority's possible acquisition. Irrespective of any statutory right to appeal, Edgewood had a right to be heard.

Similarly, in *Walker v. Hutchinson City*, 352 U.S. 112 (1956), this Court struck down Kansas Public Act 26-202 because it failed to supply actual notice to a landowner of the proposed condemnation of his land for public purposes. The Commissioners appointed under the statute simply published notice of a hearing in the official city newspaper. Yet, the Commissioners knew the appellant's name and address. Once the appellant realized his property had been condemned, he sued in equity alleging no actual notice of the proceedings.

In holding that the newspaper notice did not reasonably inform the parties of the proceedings which directly affected their legally protected interests, this Supreme Court stated:

> There is nothing peculiar about litigation between the Government and its citizens that should deprive those citizens of a right to be heard. Nor is there any reason to suspect that it will interfere with the orderly condemnation of property to preserve effectively the citizen's right to a hearing in connection with just compensation. In too many instances notice by publication is no notice at all. It may leave government authorities free to fix one-sidedly the amount that must be paid owners for their property taken for public use.
>
> *Walker* at p. 117

Similarly here, Edgewood should not be deprived of its right to be heard concerning the acquisition of 145 West Park Avenue. Edgewood's appearance at a public hearing to express its views about the Housing Authority's proposal, would not interfere with the authority's duties. The Connecticut Supreme Court's decision, however, if allowed to stand, will leave the local agency free to not publish any notice at all and do as it pleases. This is in direct conflict with the Fourteenth Amendment as interpreted by this Court in *Walker*, *supra*.

B. Petitioners' First Amendment Rights Have Been Denied by the Connecticut Supreme Court's Decision

The final sentence of the Connecticut Supreme Court's decision in the present case concludes in a matter-of-fact tone that the petitioners "merely were precluded from being able to voice their opinion about a matter in which they have no legal right to affect the outcome." (App., *infra*, 20). Connecticut's highest court has therefore decided that despite the defective notice for the public hearing, petitioners have not been deprived of "any use or enjoyment of their own property." *Id.* This decision ignores petitioners' First Amendment rights which in themselves are a vested property interest. See generally John O. McGinnis, *The Once and Future Property-Based Vision of the First Amendment*, 63 U.Chi. L. Rev. 49, 58 (1996). This decision, if allowed to stand, disregards the petitioners' free speech guaranteed by the First Amendment.

Beginning with its decision in *Hague v. C.I.O.*, 307 U.S. 496 (1939), the Supreme Court recognized that freedom of assembly is a fundamental right binding upon the states and their political subdivisions pursuant to the

Fourteenth Amendment. In *Schneider v. New Jersey*, 308 U.S. 147 (1939), the Supreme Court declared public forum speech rights as among those "vital to the maintenance of democratic institutions." *Id.* at p. 161.

In *Griswold v. Connecticut*, 381 U.S. 479 (1965), the Supreme Court noted that the right of assembly "is more than the right to attend a meeting; it includes the right to express one's attitudes or philosophies by membership in a group or by affiliation with it or by other lawful means. Association in that context is a form of expression of opinion; and while it is not expressly included in the First Amendment, its existence is necessary in making the express guarantees fully meaningful." *Id.* at p. 483. Thus, the right to attend a public hearing to express one's views or opinions is protected free speech under the First Amendment.

Indeed, many cases involving restrictions upon free expression and association rights have been subject to a higher level of scrutiny because of the fundamental nature of the rights involved. See e.g. *In Re Primus*, 436 U.S. 412 (1978) and *NAACP v. Button*, 371 U.S. 415 (1963). Here, the Connecticut Supreme Court has sanctioned the denial of Edgewood's right to publicly express its views by contorting the concept of standing. As Justice Douglas noted in *Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949):

> [t]he vitality of civil and political institutions in our society depends on free discussion. . . . [I]t is only through free debate and free exchange of ideas that government remains responsive to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from

> totalitarian regimes. Accordingly[,] a function of free speech under our system of government is to invite dispute.

Edgewood Village, Inc. and Edgewood Neighborhood Association, Inc. were denied their right to be heard. Edgewood had a right to receive information and ideas which are a part of their First Amendment rights. *Stanley v. Georgia*, 394 U.S. 557 (1969). Edgewood was entitled to adequate legal notice so it could attend the Housing Authority's March 11, 1997 public hearing. The Connecticut Supreme Court's decision, if allowed to stand, renders Edgewood's right to free speech meaningless. Anyone similarly situated to Edgewood would be denied their right to express their opinions prior to local land use action. This case therefore presents an important constitutional issue of far reaching effect and petitioners request that their writ be granted.

CONCLUSION

The Court should grant the petition for a writ of certiorari and reverse the decision of the Connecticut Supreme Court on the petitioners' Motion for Reconsideration En Banc.

Respectfully submitted,

THOMAS E. CROSBY, ESQUIRE
Counsel of Record for the Petitioners
CROSBY AND CRONAN, LLC
1291 Boston Post Road,
Suite #201
Madison, Connecticut 06443
(203) 245-0332

265 Conn. 280

CONNECTICUT SUPREME COURT

EDGEWOOD VILLAGE, INC., ET AL. *v.* HOUSING AUTHORITY OF THE CITY OF NEW HAVEN
(SC 16926)

Borden, Katz, Palmer, Vertefeuille and Zarella, Js.

Argued May 21 – officially released August 5, 2003

Thomas E. Crosby, for the appellants (plaintiffs).

Marisa A. Bellair, for the appellee (defendant).

Shelley A. White, for the appellee (intervening defendant).

Opinion

KATZ, J. The dispositive issue in this appeal[1] is whether the plaintiffs, Edgewood Village, Inc., and Edgewood Neighborhood Association, Inc., are aggrieved, and therefore have standing, to challenge the actions of the defendant, the housing authority of the city of New Haven (housing authority), pertaining to its acquisition of certain property for use as scattered site public housing pursuant to its authority under General Statutes (Rev. to 1997) § 8-44.[2]

---

[1] The plaintiffs appealed from the judgment of the trial court to the Appellate Court, and we transferred the appeal to this court pursuant to General Statutes § 51-199(c) and Practice Book § 65-1.

[2] General Statutes (Rev. to 1997) § 8-44 provides in relevant part: "An authority shall constitute a public body corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following enumerated powers in addition to others

(Continued on following page)

The plaintiffs appeal from the judgment of the trial court dismissing their action against the housing authority and the intervening defendant, Gracie White, a tenant of the housing authority, due to lack of subject matter jurisdiction. The plaintiffs claim that the trial court improperly determined that they were not aggrieved by the housing authority's defective notice of a public hearing prior to its acquisition of the subject property. We affirm the judgment of the trial court.

The record reveals the following facts and procedural history. In 1991, several individuals brought an action against the housing authority and the United States Department of Housing and Urban Development alleging that they had violated federal housing law by failing to provide scattered site housing[3] in New Haven to replace a

---

granted by any provision of the general statutes . . . (d) to . . . purchase, lease, obtain options upon or acquire, by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein, provided no real property or interest therein shall be acquired for the site of a proposed housing project until the housing authority has held a public hearing concerning such site, notice of which has been published in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen nor less than ten days, and the last not less than two days, before such hearing. . . . " Section 8-44 has been amended several times since 1997, the time of the relevant proceedings here; none of those changes affected substantive law with respect to the issue in the present case. All references herein are to the 1997 statute.

[3] Scattered site housing differs from traditional public housing in that there is no construction of large multiunit "project" style buildings. Instead, "scattered-site housing is affordable housing dispersed throughout a geographic area. This type of single-family housing typically blends in with the surroundings; it looks like any other house on a given block." J. Cummins, "Recasting Fair Share: Toward Effective Housing Law and

(Continued on following page)

demolished multiunit public housing project. See *Christian Community Action, Inc. v. Cisneros*, United States District Court, Docket No. 3:91CV00296 (AVC) (D. Conn. May 11, 1995). In 1995, the parties settled the case. Under the settlement agreement, the housing authority was required to provide scattered site units outside minority concentration areas.

Pursuant to the agreement, the housing authority identified, as a potential site, a single unit property located at 145 West Park Avenue (property) in the Edgewood neighborhood[4] of New Haven. Thereafter, on March 1 and March 8, 1997, the housing authority published in the New Haven Register a legal notice, stating its intention to acquire the property and announcing a public hearing for March 11, 1997.[5] After the hearing, the authority acquired

---

Principled Social Policy," 14 Law & Ineq. 339, 385 n.241 (1996). Individual residences are acquired or built by the authority within existing neighborhoods, and the tenants are "scattered" within those neighborhoods. The rationale behind this form of public housing is to "improve opportunities for low-income families to become both economically and racially integrated into mainstream society." R. Sander, "Individual Rights and Demographic Realities: The Problem of Fair Housing," 82 Nw. U.L. Rev. 874, 932 (1988). Indeed, courts have used scattered site housing to remedy the historical racial segregation that traditional housing projects have continued to propagate. See *Gautreaux v. Chicago Housing Authority*, 304 F. Sup. 736, 737-43 (N.D. Ill. 1969) (ordering defendant to remedy historical segregation in public housing by establishing certain percentage of public housing in predominately white areas).

[4] According to the plaintiffs' complaint, the Edgewood neighborhood is the area bounded by West Park Avenue, Whalley Avenue, Winthrop Avenue and Chapel Street in New Haven.

[5] The notice dated March 1, 1997, provided in relevant part: "Notice is given, pursuant to [General Statutes §] 8-44, that the Board of Commissioners of the Housing Authority of the City of New Haven

(Continued on following page)

the property, and subsequently placed White as a tenant on the premises.

In a complaint dated July 14, 1997, the plaintiffs brought an action seeking both temporary and permanent injunctions barring the housing authority from leasing, transferring or otherwise using the property for residential purposes. The plaintiffs alleged that Edgewood Village, Inc., is a nonprofit corporation that owns real property located at 139 West Park Avenue and that Edgewood Neighborhood Association, Inc., is an organization established "for the purposes of . . . preserving and advancing the common good of residents and owners of property in the Edgewood neighborhood. . . . " The plaintiffs further alleged that the housing authority had failed, in violation of § 8-44, to give proper notice of the hearing with regard to its acquisition of the property for use as a scattered site housing project. On July 16, 1997, the trial court, *W. Sullivan, J.*, granted the temporary injunction, pending further order of the court.

On August 20, 1997, the housing authority filed a motion to dismiss the action, claiming that the court lacked both subject matter and personal jurisdiction. Specifically, the housing authority maintained that the

---

(the Authority) will hold a public hearing at 5:30 PM on Tuesday, March 11, 1997 at Katherine Brennan School, 200 Wilmot Rd., New Haven, CT to receive public comment on the potential acquisition by the Authority of an existing 1-unit property at 145 West Park Ave.; and an existing 1 unit property at 63 Fulton St. (which is proposed to be demolished, and the land combined with adjacent property already owned by the Authority for a new construction development).

"Authority staff and supplemental materials are available. . . . "

court lacked subject matter jurisdiction because the plaintiffs did not have standing, and the court lacked personal jurisdiction because the plaintiffs had failed to include a return date on the summons, rendering it defective. In its memorandum of decision issued October 27, 1997, the court determined that it had subject matter jurisdiction over the claim, concluding that the plaintiffs were classically aggrieved. The court granted the motion to dismiss for lack of personal jurisdiction, however, on grounds that the plaintiffs' purported summons was defective and that the plaintiffs had failed to file a writ of summons, as required by statute. See General Statutes § 52-45a.

On October 29, 1997, the plaintiffs commenced the present action against the housing authority. In their complaint, the plaintiffs alleged, inter alia, that the housing authority had failed: (1) to give timely and proper notice of the hearing in violation of § 8-44; (2) to provide adequate supervision to ensure that the scattered housing units properly would be maintained, thereby adversely affecting the plaintiffs' property values; and (3) to follow its internal guidelines with respect to scattered site housing. The plaintiffs sought both temporary and permanent injunctions barring the housing authority from leasing, transferring or otherwise using the premises for residential purposes. Thereafter, the housing authority removed the action to the United States District Court for the District of Connecticut. The plaintiffs then filed a motion in the District Court to remand the case back to the state Superior Court, which the court, Squatrito, J., granted. *Edgewood Village, Inc. v. Housing Authority*, United States District Court, Docket No. 3:972371 (DJS) (September 29, 1998).

On remand to state court, White filed a motion to be made a party defendant pursuant to General Statutes § 52-102 and Practice Book § 99, which the court, *Pittman, J.*, granted. On March 28, 2000, White filed a motion to dismiss the plaintiffs' complaint for lack of subject matter jurisdiction due to lack of standing. The trial court, *Thompson, J.*, granted the motion in part with respect to the plaintiffs' claim regarding the housing authority's failure to follow its guidelines, but denied the motion with respect to the housing authority's alleged failure to comply with the notice provisions of § 8-44.[6]

On July 26, 2000, the defendants filed a joint motion for summary judgment, claiming that the notice was legally sufficient. The trial court, *Munro, J.*, denied the motion, concluding that the first notice of March 1, 1997, was inadequate under the requirements of § 8-44, in that it was published less than ten days before the hearing. See footnote 2 of this opinion. Thereafter, the plaintiffs filed a motion for summary judgment, claiming that there was no issue of material fact as to the authority's failure to comply with the notice provisions of § 8-44. On August 15, 2001, the plaintiffs filed a second amended complaint, further alleging that the authority's defective notice deprived them of due process by precluding them from attending the hearing and commenting on the proposed acquisition. The plaintiffs also amended the relief sought, asking the court to void the housing authority's acquisition of the

---

[6] The court did not address the plaintiffs' standing with respect to their claim of the housing authority's inadequate supervision of the property and the resulting potential effect on the plaintiffs' property values.

property and to order that the authority dispose of the property to Edgewood Village, Inc.

In a memorandum of decision on the plaintiffs' motion for summary judgment, the trial court, *Robinson, J.*, indicated that its review of the file, in light of the injunctive relief sought in the amended complaint, raised concerns that the plaintiffs lacked standing to obtain the relief sought.[7] After determining that the plaintiffs were not statutorily aggrieved, the court then pondered whether the plaintiffs were classically aggrieved. Specifically, the court noted that "[t]he issues raised by the plaintiffs in their second amended complaint concerning the opportunity to attend the public hearing and comment on the subject matter of the hearing go to the concerns of the general community at large and do not appear to demonstrate that the plaintiffs were affected . . . in a specific and personal manner. . . . [Moreover] [t]he fact that the subject matter of the notice dealt with a property that is in close proximity of the plaintiffs' real property also does not give the plaintiffs standing." The court further noted that the relief requested raised questions about the plaintiffs' standing because they requested disposal of the property to Edgewood Village, Inc., and not a declaratory judgment as to whether the hearing properly had been held. Therefore, the court ordered the parties to submit simultaneous memoranda of law on the issue of subject matter jurisdiction, and denied the plaintiffs' motion for summary judgment

---

[7] Judge Robinson noted in his memorandum of decision that the plaintiffs had clarified during oral argument that, despite requesting an "order declaring" certain relief in their complaint, they were not seeking declaratory relief.

without prejudice. In a memorandum of decision dated April 23, 2002, the court concluded, for the reasons it previously had expressed, that the plaintiffs did not have standing and, accordingly, that the court did not have subject matter jurisdiction over the plaintiffs' claims. Therefore, the trial court rendered judgment dismissing the action. This appeal followed.

The plaintiffs contend that the trial court improperly determined that they were not aggrieved. Specifically, they contend that they were denied due process because the housing authority's failure to provide timely and specific notice of its intention to acquire the property for scattered site housing, as the plaintiffs contend is required by § 8-44, deprived them of the opportunity to participate in the hearing.[8] The plaintiffs claim that this lack of notice precluded them from expressing their concerns about the effect of the housing authority's acquisition and use of the property on their safety and property values, an interest that they allege is distinct from concerns held by the general public. They further contend that, because the

---

[8] The plaintiffs also claim that Judge Robinson improperly: (1) dismissed the action for lack of standing, in light of Judge Munro's prior determination that the notice was defective under § 8-44; and (2) raised the issue of subject matter jurisdiction, sua sponte, in light of Judge Thompson's prior determination that the plaintiffs had standing to pursue their claims. Because we conclude that the lack of adequate notice resulting in the plaintiffs' inability to express their views at the hearing does not provide a basis for standing, we reject the first claim. With respect to the plaintiffs' second claim, we note that, because standing raises an issue of subject matter jurisdiction that the court must address even when the parties stipulate to the court's jurisdiction; see *Rayhall v. Akim Co.*, 263 Conn. 328, 337, 819 A.2d 803 (2003); Judge Robinson properly considered the issue.

notice was defective, the housing authority acquired the property illegally. We disagree.

We first set forth the standard of review and legal principles that guide our analysis. "We have long held that because [a] determination regarding a trial court's subject matter jurisdiction is a question of law, our review is plenary." (Internal quotation marks omitted.) *In re Shawn S.*, 262 Conn. 155, 164, 810 A.2d 799 (2002). "In order for a party to have standing to invoke the jurisdiction of the court, that party must be aggrieved. Standing is the legal right to set judicial machinery in motion. One cannot rightfully invoke the jurisdiction of the court unless [one] has, in an individual or representative capacity, some real interest in the cause of action. . . . Standing is established by showing that the party claiming it is authorized by statute to bring suit [in other words, statutorily aggrieved] or is classically aggrieved. . . . The fundamental test for determining [classical] aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all the members of the community as a whole. Second, the party claiming aggrievement must successfully establish that the specific personal and legal interest has been specially and injuriously affected by the decision." (Internal quotation marks omitted.) Id., at 164-65.

Although they are not claiming statutory aggrievement, the gravamen of the plaintiffs' claims nevertheless rests on their contention that they are classically aggrieved by the housing authority's failure to comply with the notice provisions of § 8-44. Therefore, we consider the

purpose of the hearing requirement, as reflected in the language and legislative history of § 8-44, to determine whether the plaintiffs, as neighboring property owners, have a specific personal and legal interest in attending the hearing.

The relevant portion of the statute provides that the housing authority may, inter alia, "purchase, lease, obtain options upon or acquire, by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein, *provided no real property or interest therein shall be acquired for the site of a proposed housing project until the housing authority has held a public hearing concerning such site, notice of which has been published in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen nor less than ten days, and the last not less than two days, before such hearing. . . .*" (Emphasis added.) General Statutes (Rev. to 1997) § 8-44(d). We first note that there is nothing in § 8-44 or the public housing statutory scheme generally; see General Statutes § 8-38 et seq.; creating a cause of action against the housing authority or a right of appeal should the housing authority fail to comply with the hearing requirement. We further note that, although the statute provides for a public hearing, it places no requirements or limitations on the actions the housing authority may take as a result of comments it receives at the hearing, irrespective of the nature and degree of opposition from hearing participants. Accordingly, under § 8-44, the legislature has vested discretion solely in the housing authority to make decisions regarding the location of public housing projects, whether to purchase or lease property it deems suitable and whom it shall place in

property it acquires. Indeed, subsequent to the hearing, the housing authority may make its decision unaffected by the will of the community, just as any other private individual may in deciding whether to purchase a home or to whom to sell his home.

It is noteworthy that the legislative history of § 8-44 reflects that the legislature recognized the importance of providing a forum for the community to express its views. See Conn. Joint Standing Committee Hearings, Judiciary and Governmental Functions, Pt. 2, 1957 Sess., p. 533, remarks of Senator Theodore Lynch.[9] That history also expresses the legislature's hope that the housing authority would take those views into account when deciding whether to go forward with a housing project. See id., remarks of Senator Lynch[10] and remarks of Representative Mary Fahey;[11] 7 H.R. Proc., Pt. 6, 1957 Sess., p. 3368, remarks of

---

[9] Senator Lynch stated: "This bill calls for public hearings before the development commissions can change the geography of existing neighborhoods. We have found that people who have been established in a certain neighborhood have found there is a redevelopment going on which they knew nothing about before. They made an appeal to the commission and got nowhere. . . . This bill will require the redevelopment commission to have a public hearing before they take property, condemn it and convert it into a housing project." Conn. Joint Standing Committee Hearings, supra, at p. 533.

[10] In response to a question posed about what happens after the hearing, Senator Lynch stated: "I think in my experience it calls for [a hearing]. If the people come in [the housing authority] will listen to them." Conn. Joint Standing Committee Hearings, supra, at p. 533.

[11] Representative Fahey stated: "I feel it [is] only the right of the people to have a public hearing. An aroused public opinion will be strength enough." Conn. Joint Standing Committee Hearings, supra, at p. 533.

Representative Maurice Gersten.[12] In view, however, of the comments made during the legislative debates and the legislature's decision not to impose any restrictions on the housing authority's exercise of its authority pursuant to § 8-44, we can infer that the legislature's primary purpose in prescribing the hearing was to ensure that the *housing authority* had the ability to make informed decisions in determining appropriate public housing sites.

Our reasoning is further informed by reference, and *in contrast*, to the comprehensive remedial and procedural scheme set forth in the zoning statutes; General Statutes § 8-1 et seq.; and our case law recognizing classical aggrievement arising from that scheme. See *Gladysz v. Planning & Zoning Commission*, 256 Conn. 249, 257, 773 A.2d 300 (2001) ("[T]he standard for determining whether a party has standing to apply [for a permit] in a zoning matter is less stringent. A party need have only a sufficient interest in the property to have standing to apply in zoning matters."). Like the chapter of our General Statutes governing public housing, the zoning scheme contains a provision requiring a public hearing. Compare General Statutes § 8-44 with General Statutes § 8-3(a).[13] Unlike

---

[12] Representative Gersten stated: "[T]he second provision [of the bill] would take care of public hearings on moderate rental housing projects after advertising the [same] specifically, and the ads would have to take into consideration the character of the neighborhood and the areas to be considered before it could be established." 7 H.R. Proc., supra, at p. 3368.

[13] General Statutes § 8-3(a) provides: "Such zoning commission shall provide for the manner in which regulations under section 8-2 or 8-2j and the boundaries of zoning districts shall be respectively established or changed. No such regulation or boundary shall become effective or be established or changed until after a public hearing in

(Continued on following page)

the public housing scheme, however, the zoning scheme provides for statutory aggrievement. See General Statutes § 8-8(a)(1)[14] (providing standing for "any person owning land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the [zoning] board"). Indeed, the zoning commission may be required to provide notice specifically to those owners whose land is included in or adjacent to the land which is the subject of the hearing. General Statutes § 8-3(a). More

---

relation thereto, held by a majority of the members of the zoning commission or a committee thereof appointed for that purpose consisting of at least five members, at which parties in interest and citizens shall have an opportunity to be heard. Notice of the time and place of such hearing shall be published in the form of a legal advertisement appearing in a newspaper having a substantial circulation in such municipality at least twice at intervals of not less than two days, the first not more than fifteen days nor less than ten days, and the last not less than two days, before such hearing, and a copy of such proposed regulation or boundary shall be filed in the office of the town, city or borough clerk, as the case may be, in such municipality, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located, for public inspection at least ten days before such hearing, and may be published in full in such paper. In addition to such notice, such zoning commission may, by regulation, provide for notice by mail to persons who are owners of land which is included in or adjacent to the land which is the subject of the hearing. The commission may require a filing fee to be deposited with the commission to defray the cost of publication of the notice required for a hearing."

[14] General Statutes § 8-8(a)(1) provides: " 'Aggrieved person' means a person aggrieved by a decision of a board and includes any officer, department, board or bureau of the municipality charged with enforcement of any order, requirement or decision of the board. In the case of a decision by a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, 'aggrieved person' includes any person owning land that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board."

importantly, the zoning scheme provides for a right of appeal. See General Statutes § 8-8(b).[15] The zoning scheme, therefore, in contrast to the public housing scheme, reflects a constellation of statutory rights from which other legal rights may arise. In view of this comprehensive remedial scheme, we have recognized specific personal legal rights arising from violations of the zoning provisions that establish classical aggrievement. See, e.g., *Alliance Energy Corp. v. Planning & Zoning Board*, 262 Conn. 393, 404-405, 815 A.2d 105 (2003) (noting long-standing common-law rule finding taxpayers within municipality "automatically" and, therefore, classically aggrieved when zoning decision involves sale of liquor); *Harris v. Zoning Commission*, 259 Conn. 402, 414, 788 A.2d 1239 (2002) (practical impact of zoning amendment on property owners sufficient to satisfy first prong of classical aggrievement test of personal legal interest despite application of amendment to residents generally); *Bright v. Zoning Board of Appeals*, 149 Conn. 698, 704, 183 A.2d 603 (1962) (property owners beyond scope of statutory aggrievement established specific, personal interest in zoning variance granted to neighboring golf club).

By contrast, in the present case, the plaintiffs have not demonstrated that their interest in attending the hearing is a specific and legal interest. Although the plaintiffs reside next to or near the property at issue, the

---

[15] General Statutes § 8-8(b) provides in relevant part: "Except as provided in subsections (c), (d) and (r) of this section and sections 7-147 and 7-147i, any person aggrieved by any decision of a board, including a decision to approve or deny a site plan pursuant to subsection (g) of section 8-3, may take an appeal to the superior court for the judicial district in which the municipality is located. . . ."

housing scheme does not reflect concerns that mere proximity to public housing would bestow a specific and legal interest due to the defective notice. See *Vose v. Planning & Zoning Commission*, 171 Conn. 480, 484, 370 A.2d 1026 (1976) (abutting landowner not automatically classically aggrieved); R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (2d Ed. 1999) § 32.5, p. 111. Indeed, consistent with the statutory requirement to provide general notice to the community, the defective notice not only affected the plaintiffs, but also every other resident of New Haven, who, for whatever reason, wished to be heard on the issue of scattered site public housing at 145 West Park Avenue. The defective notice, therefore, as it affected the plaintiffs, cannot be "distinguished from [the] general interest, such as is the concern of all the members of the community as a whole." *In re Shawn S.*, supra, 262 Conn. at 165, 810 A.2d 799. Accordingly, the plaintiffs have not demonstrated that they had a specific personal and legal interest in attending the hearing.

For similar reasons, the plaintiffs' contention that the housing authority's actions in acquiring the property were illegal and void, due to its failure to give proper notice of the hearing, is unfounded. We have recognized, in zoning related matters, that an agency's failure to follow the statutory hearing requirement constitutes a jurisdictional defect that invalidates the agency's actions. See, e.g., *Akin v. Norwalk*, 163 Conn. 68, 74, 301 A.2d 258 (1972) (town common council's failure to follow notice procedure rendered subdivision approval null and void); *Slagle v. Zoning Board of Appeals*, 144 Conn. 690, 693, 137 A.2d 542 (1957) (appeal from granting of variance sustained due to zoning board of appeals' failure to comply with notice time requirements). Accordingly, we have explained that the right

to challenge the validity of the agency's action due to an inadequate hearing notice is based, in part, on the fact that the notice is a necessary predicate to exercising a statutory right to appeal. See *Bridgeport Bowl-O-Rama, Inc. v. Zoning Board of Appeals*, 195 Conn. 276, 281, 487 A.2d 559 (1985) (" '[t]he right of appeal, if it is to have any value, must necessarily contemplate that the person who is to exercise the right be given the opportunity of knowing that there is a decision to appeal from and of forming an opinion as to whether that decision presents an appealable issue' "); *Akin v. Norwalk*, supra, 73, ("[t]he obvious purpose of [General Statutes §] 8-28, requiring the publication in a newspaper of the decision of a [planning] commission, is twofold: (1) To give notice to interested parties of the decision, and (2) to commence the start of the fifteen-day appeal period"). As we previously noted, although the zoning scheme contains a statutory right of appeal; see footnote 15 of this opinion; there is no right of appeal under the public housing scheme.

The plaintiffs' allegation of declining property values as a basis for aggrievement is similarly without merit.[16] Again, in the context of zoning, we have recognized that diminution of property value may establish aggrievement. Compare *Hyatt v. Zoning Board Of Appeals*, 163 Conn. 379, 381, 311 A.2d 77 (1972) (aggrievement established) and *Berlani v. Zoning Board Of Appeals*, 160 Conn. 166, 168-69, 276 A.2d 780 (1970) (same) with *Sachem's Head*

[16] We note that the trial court did not address the issue of alleged declining property values in its opinion, even though the plaintiffs pleaded it in their second amended complaint. The plaintiffs did not file a motion to articulate to compel the trial court to address this issue.

Assn. v. Lufkin, 168 Conn. 365, 368, 362 A.2d 519 (1975) (no aggrievement because diminution of value claim too speculative). As we previously explained, the comprehensive remedial statutory scheme for zoning gives rise to other legal rights that we do not otherwise recognize in the absence of such a statutory nexus or a compelling policy reason. See *Alliance Energy Corp. v. Planning & Zoning Board*, supra, 262 Conn. at 399-403 (affirming presumption of classical aggrievement in cases related to zoning board actions involving sale or use of liquor or that affect traffic in connection with such sale or use in light of public policy concerns). Indeed, although we have recognized, outside the context of zoning, that an agency's decision resulting in a diminution of value in a property interest may establish aggrievement, the plaintiff first was required to demonstrate that he or she had a specific legal interest in the subject matter of the decision. Compare *New England Rehabilitation Hospital of Hartford, Inc. v. Commission on Hospitals & Health Care*, 226 Conn. 105, 122-27, 627 A.2d 1257 (1993) (statutory scheme does not give rise to legal interest allowing plaintiff hospitals to challenge defendant commission's decision to grant defendant hospitals' application for certificate of need for construction of rehabilitation hospital on ground of dilution and diminution in value of each certificate of need for similar service) with *Light Rigging Co. v. Dept. of Public Utility Control*, 219 Conn. 168, 176-77, 592 A.2d 386 (1991) (statutory scheme gives rise to specific personal and legal interest allowing plaintiff motor carriers to challenge defendant department's decision granting to competitor certificate to operate business for which no public need exists based on allegation of resulting diminution in value of plaintiffs' certificates). It is clear, however, that the public housing scheme does not give rise to a specific legal

interest to permit neighboring property owners to contest a decision by the housing authority to acquire property on the basis of an allegation that a decline in property value potentially will result.

In essence, the plaintiffs are attempting to undo a real estate transaction because they believe that the persons who will reside there may cause the surrounding property values to decline. Endorsing such a rule, however, would prevent property owners from freely selling their land to anyone they choose, based merely upon complaints by members of the neighborhood that the buyers potentially would cause their property values to decline. We decline to adopt such a rule, as it would violate our strong public policy against restraints on the alienation of property. See *Gangemi v. Zoning Board of Appeals*, 255 Conn. 143, 151, 763 A.2d 1011 (2001) (holding that "no rental" zoning provision violated public policy against restraints on alienation). Moreover, such a view would continue to perpetuate the "not-in-my-backyard" response that is so often recited in reaction to scattered site placements. See J. Seliga, "*Gautreaux* a Generation Later: Remedying the Second Ghetto or Creating the Third?" 94 Nw. U.L. Rev. 1049, 1061 n.66 (2000) (neighborhood responses to scattered site public housing akin to proposals to situate prisons and dumps in neighborhoods). Therefore, the plaintiffs have not met the first prong of the classical aggrievement test and, accordingly, lack standing to pursue their claim.[17]

---

[17] Because we conclude that the plaintiffs have not met the first prong of the classical aggrievement test, we need not decide whether they have satisfied the second prong.

The plaintiffs, however, cite several cases they claim support their contention that they have a specific and legal interest and are therefore aggrieved: *AvalonBay Communities, Inc. v. Orange*, 256 Conn. 557, 569, 775 A.2d 284 (2001); *Timber Trails Corp. v. Planning & Zoning Commission*, 222 Conn. 374, 378, 610 A.2d 617 (1992); *Hart Twin Volvo Corp. v. Commissioner of Motor Vehicles*, 165 Conn. 42, 45-47, 327 A.2d 588 (1973); *Hartford Electric Light Co. v. Water Resources Commission*, 162 Conn. 89, 110-12, 291 A.2d 721 (1971). These cases are inapposite. *Timber Trails Corp.* involved our zoning laws, which, as we previously explained herein, provide a comprehensive remedial scheme that gives rise to specific legal rights. In that case, we held that the defendants' failure to comply with the notice provisions of § 8-3 when changing zone boundaries rendered those changes invalid. *Timber Trails Corp. v. Planning & Zoning Commission*, supra, at 378. A change of zone necessarily alters one of the bundles of rights possessed by a landowner – the use of the property – such that a legal interest is affected. In *AvalonBay Communities, Inc.*, the defendant town attempted to block the plaintiff landowners' construction of affordable housing by asserting eminent domain to acquire the plaintiffs' land and construct on it a hastily planned industrial park. *AvalonBay Communities, Inc. v. Orange*, supra, at 561-62. That case is clearly distinguishable from the present case. First, in *AvalonBay Communities, Inc.*, the plaintiffs' own property was directly at issue in the challenged proceedings. Second, we concluded therein that the plaintiffs had standing based in part on our recognition that their interest was in furtherance of the purpose underlying the statutory scheme governing municipal development projects. Id., 569.

The latter two cases cited by the plaintiffs involved challenges to defective notice when the administrative action resulted directly in the deprivation of existing property rights, unlike the present case. This court's decision in *Hart Twin Volvo Corp.* involved the suspension of a new car dealer's license to sell motor vehicles, and we held that a suspension proceeding required proper notice and a hearing because it concerned a property interest, namely, the right to earn a livelihood by selling cars. *Hart Twin Volvo Corp. v. Commissioner of Motor Vehicles*, supra, 165 Conn. at 46. Likewise, *Hartford Electric Light Co.* involved defective notice in a hearing concerning power lines, where the notice failed to inform the plaintiff that its application to span two new lines across the Connecticut River would be granted on the condition that it remove one of its existing lines that already spanned the river. *Hartford Electric Light Co. v. Water Resources Commission*, supra, 162 Conn. at 111-12. In the present case, the housing authority's defective notice has not deprived the plaintiffs of any use or enjoyment of their own property, nor has it deprived them of any other preexisting property right. Indeed, the plaintiffs merely were precluded from being able to voice their opinion about a matter in which they had no legal right to affect the outcome.

The judgment is affirmed.

In this opinion PALMER, VERTEFEUILLE AND ZARELLA, Js., concurred.

BORDEN, J., concurring.

I agree that, under the circumstances of this case, the plaintiffs, Edgewood Village, Inc., and Edgewood Neighborhood Association, Inc., have no standing to challenge the

actions of the defendant housing authority of the city of New Haven in purchasing the property in question. I therefore agree that the trial court's judgment dismissing the plaintiffs' action should be affirmed. I write separately, however, because I reach this conclusion by a somewhat different route from that of the majority.

I begin by emphasizing that the only defect in the public notice of the hearing on the proposed purchase of the property that is before us is that the notice was published one day short of the time period of ten days before the hearing as required by General Statutes (Rev. to 1997) § 8-44(d). Moreover, the plaintiffs do not claim that this one day discrepancy in any way *actually* deprived them of the opportunity to attend the hearing.

I agree with the majority's analysis of the statutory scheme in that, because our municipal housing statutes do not contemplate an appeal from the action of the housing authority in deciding to purchase the property after the hearing, this scheme is very different from that established by our usual zoning and other land use statutes, which do provide for appeals by aggrieved persons. Compare, e.g., General Statutes § 8-8(b) (providing right of appeal, with some exceptions, for "any person aggrieved by any decision of a [zoning] board . . . to the superior court"). Thus, as the majority suggests, the cases that hold that a defect in the statutorily required public notice of a land use hearing deprive the land use authority of subject matter jurisdiction; see, e.g., *Lauer v. Zoning Commission*, 220 Conn. 455, 461, 600 A.2d 310 (1991); see also *Jarvis Acres, Inc. v. Zoning Commission*, 163 Conn. 41, 44, 301 A.2d 244 (1972); do not apply to the statutory scheme in the present case. Put another way, the failure to comply strictly with the statutory notice requirement in § 8-44 did

not deprive the housing authority of subject matter jurisdiction to purchase the property in question.

As a result, the plaintiffs' claim boils down to a claim of a due process violation. Because the housing authority's decision about whether to purchase the property was purely discretionary, however, the plaintiffs had no cognizable property interest therein for due process purposes. See *Kelley Property Development, Inc. v. Lebanon*, 226 Conn. 314, 321, 627 A.2d 909 (1993) (plaintiff had no cognizable property interest in subdivision application because zoning commission's consideration thereof was discretionary). Therefore, they had no standing to challenge it.

Nonetheless, the implication of the majority's analysis is that, despite the statutory requirement of a hearing, no nearby property owner would have standing to challenge the housing authority's decision, even if the housing authority held *no* hearing. I am not willing to go that far.

Although, on the facts of this case, the plaintiffs were not actually harmed by the one day failure to comply with the required public notice, and only the purchase of a single home is at issue, nonetheless, the statutory notice also applies to any housing project contemplated by the housing authority. See General Statutes (Rev. to 1997) § 8-44(d). The legislative history indicates to me that one of the purposes of the hearing, in addition to permitting the housing authority to get all relevant information, was to permit neighbors of a potential housing project to attempt to persuade the members of the housing authority not to

go ahead with an intended project.[1] I would conclude, therefore, that, unlike this case, where a housing authority does not hold *any* hearing, a property owner who therefore was completely deprived of his right to persuade the housing authority at such a hearing, and who could otherwise establish harm, such as by way of evidence of a loss of value of his or her property, *might* have a protected interest for due process purposes.

---

[1] For example, as noted in footnote 9 of the majority opinion, Senator Theodore Lynch voiced the concern that neighboring property owners were not sufficiently informed of proposed housing projects prior to the enactment of § 8-44(d). Senator Lynch stated: "This bill calls for public hearings before development commissions can change the geography of existing neighborhoods. We have found that people who have been established in a certain neighborhood have found there is a redevelopment going on which they knew nothing about before. They made an appeal to the commission and got nowhere." Conn. Joint Standing Committee Hearings, Judiciary and Governmental Functions, Pt. 2, 1957 Sess., p. 533.

D.N. CV 97 0405939 S	:	SUPERIOR COURT
EDGEWOOD VILLAGE, INC, ET AL.	:	J.D. of NEW HAVEN
	:	AT NEW HAVEN
V.	:	(Filed April 23, 2002)
HOUSING AUTHORITY, ET AL	:	

MEMORANDUM OF DECISION, RE: SUBJECT MATTER JURISDICTION

For the reasons stated herein, this Court finds that it is without subject matter jurisdiction to hear this matter and therefore dismisses it.

Subsequent to the plaintiffs amending their prayer for relief and claiming their Motion for Summary Judgment for argument, the Court raised the issue as to whether it had subject matter jurisdiction in this matter. The Court requested that the parties address the issues that it raised in its memorandum of decision by January 31, 2002.[1]

The plaintiff Edgewood Village, Inc., is a non-stock, non-profit corporation organized pursuant to Chapter 600 of the Connecticut General Statutes and is the owner of real property located at 139 West Avenue in the City of New Haven.

---

[1] The Court notes that the plaintiffs have raised an issue concerning the title of the Court's Memorandum of Decision concerning the Plaintiffs' Motion for Summary Judgment, i.e., the Court's decision was entitled "Memorandum of Decision Re: Motion #145 Motion for Summary Judgment – Liability Only," however the issue of jurisdiction raised by the Court in said memorandum exist regardless of how the memorandum was entitled.

The plaintiff Edgewood Neighborhood Association Inc., is a Connecticut non-stock, non-profit corporation established for the purposes of the preserving and advancing the common good of residents and owners of property in the Edgewood neighborhood, bounded by West Park Avenue, Whalley Avenue, Winthrop and Chapel Street, which neighborhood contains the real property referred to above.

The defendant Housing Authority of the City of New Haven (hereinafter "HANH") is a body corporate and politic existing under the provisions of §8-40 of the Connecticut General Statutes.

The defendant Gracie White is a tenant of HANH and resides at 145 West Park Avenue, the property that is the subject of this action.

> Pursuant to §8-40 C.G.S., the defendant HANH is authorized, in part, to purchase or acquire real and personal property for use as a proposed "housing project" as that term is defined in §8-39(i) C.G.S.

Section 8-44(d) of the Connecticut General Statutes provides that in addition to the powers granted by other sections of the Connecticut General Statutes, a Housing Authority shall have the power to:

> . . . [D]emise any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon or acquire, by gift, grant, bequest, devise or otherwise, any real or personal property or any interest

> therein, provided no real property or interest therein shall be acquired for the site of a proposed housing project until the housing authority has held a public hearing concerning such site, notice of which has been published in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen nor less than ten days, and the last not less than two days, before such hearing; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof whether or not incurred by such authority, secured by mortgages on any property included in any of its housing projects. (emphasis added.)

Prior to March 1, 1997, the defendant HANH decided to acquire a parcel of real property located at 145 West Park Avenue in the City of New Haven. The property is a single family home located adjacent to the property owned by the plaintiff Edgewood Village, Inc. HANH intended to use said property as a "scattered site" housing project.

On March 1, 1997 and March 8, 1997, the defendant HANH published notices of a public hearing for March 11, 1997 regarding its potential acquisition of two properties, 63 Fulton Street and 145 West Park Avenue (the subject property). Said notices gave notice that pursuant to §8-44 C.G.S., HANH was going to hold a public hearing on March 11, 1997. The subject of the proposed hearing was the acquisition of the subject property as well as the Fulton Street property.

The plaintiffs in the instant action assert that the defendant HANH did not comply with the provisions of §8-44 C.G.S. when they published their notices concerning acquisition of the property located at 145 West Park Avenue, New Haven, CT. Specifically the plaintiffs assert that the notices published by HANH did not meet the time requirements specified in subsection 8-44(d) C.G.S., which provides in pertinent part that:

> . . . [N]o real property or interest therein shall be acquired for the site of a proposed housing project until the housing authority has held a public hearing concerning such site, notice of which has been published in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen *nor less than ten days,* and the last not less than two days, before such hearing . . . (emphasis added.)

As a remedy for the alleged violation of §8-44 C.G.S., the plaintiffs, pray for the following relief:

> 1. That the Superior Court enter an Order declaring the defendant Housing Authority of the City of New Haven's acquisition of 145 West Park Avenue void *ab initio* because the Housing Authority lacked jurisdiction to take any action to acquire 145 West Park Avenue on March 11, 1997 and furthermore pursuant to 42 U.S.C. §1437p. et seq. and the regulations adopted thereunder Order the Housing Authority to dispose of the

property to the plaintiff Edgewood Village, Inc. as a non-profit organization.[2]

2. That the plaintiffs be allowed to tax its costs as provided by statute.

After the Court notified the parties of its concern about whether or not it had subject matter jurisdiction to give the plaintiffs the redress sought, the plaintiffs have attempted to revise their complaint in a manner that it felt would resolve the issues raised by the Court. However the plaintiff cannot cure the apparent defect in its complaint in this manner:

> It is axiomatic that if the court lacks subject matter jurisdiction, it is without power to hear the matter before it. Therefore, the court must determine the jurisdictional issue "before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction." (Internal quotation marks omitted.) *Blakeney v. Commissioner of Correction,* 47 Conn. App. 568, 572.

Pinchbeck v. Dept. of Public Health, Supra at 207 (2001).

It is noted that the plaintiffs attempted to make the aforementioned amendment even after being put on notice

---

[2] It is important to note that during oral argument the plaintiffs clarified an issue that was raised in the defendants' Joint Objection to Plaintiffs' Second Amended Complaint as well as during oral argument concerning the language that was used in said Second Amended Complaint. The Plaintiffs provided that although the language of the document says that the plaintiffs are seeking "an Order *declaring* . . . " the plaintiffs are *not* seeking declaratory relief.

that the Court has raised the issue of subject matter jurisdiction and had notified the parties that that it could not "move one step further" until the issue was resolved.

As was mentioned by this Court in its Memorandum Re: Summary Judgment the issue of standing was previously raised and addressed earlier by a coordinate judge of the superior court. However, the judges who previously presided over this matter did not have the version of the Complaint that was before this Court.

The relief that the plaintiffs requested in their Second Amended Complaint brought the issue of standing to this Court's attention. Plaintiffs do not request declaratory relief as to whether the hearing was properly held or whether the issues discussed at the hearing were properly before HANH, or even if the decision to acquire the subject property was valid or void abinitio.[3] Instead the plaintiffs demand that the court order the defendant HANH to "dispose of the property to the plaintiff Edgewood Village, Inc. as a non-profit organization." It is in the Second Amended Complaint that this type of relief appeared in this matter for the first time. This relief was not requested in the original complaint, the amended complaint or in the related matter that was dismissed and cited in the court's memorandum Re: Motion to Dismiss #125. *Edgewood Village v. Housing Authority of New Haven,* CV 97-0402408 (Sullivan, J.). It therefore could not have been a part of the considerations of the court in its review of the issue of the plaintiffs' standing before this time.

---

[3] See footnote number one, plaintiffs stated during oral argument that they are *not* seeking declaratory relief.

> . . . "It is a basic principle of our law . . . that the [plaintiff] must have standing in order for a court to have jurisdiction to render a declaratory judgment. (Internal quotation marks omitted.) *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 613, 508 A.2d 743 (1986). "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . Thus, standing does not hinge on whether the plaintiff will ultimately be entitled to obtain relief on the merits of an action, but on whether he is entitled to seek the relief." (Internal quotation marks omitted.) *Lewis v. Swan*, 49 Conn. App. 669, 675, 716 A.2d 127 (1998); see also *Gay & Lesbian Law Students Assn. v. Board of Trustees*, 236 Conn. 453, 463, 673 A.2d 484 (1996).

Pinchbeck v. Dept. of Public Health, 65 Conn. App. Supra at 205 (2001).

This Court is greatly concerned about raising an issue that was previously addressed by a coordinate judge of the Superior Court. However, it cannot ignore the fact that a fundamental change was made in the Complaint and this change brought the issue of subject matter jurisdiction directly to the Court's attention. As was previously stated the coordinate judge of the Court did *not* have the same prayer for relief that is now before this Court.

The plaintiff in response to the Court's request for memorandum and supporting documentation, cite the law

of the case doctrine as a reason that this Court should not address the issue of subject matter jurisdiction, but as stated previously in its Memorandum Re: Summary Judgment:

> [Our appellate court] has held that when the jurisdiction of the trial court is implicated, an adjudicator is not bound by the law of the case doctrine, but should consider independently the issue of jurisdiction.
>
> *Westbrook v. Savin Rock Condominiums Assn., Inc.*, 50 Conn. App. 236, 240, 717 A.2d 789 (1998).

This court is concerned with the issue as whether the plaintiffs have standing to bring an action for the violation of the notice provisions of §8-44 of the Connecticut General Statutes.

> . . . "Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved. . . . The fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]." (Citation omitted; internal quotation marks omitted.) *Steeneck v. University of Bridgeport*, supra, 235 Conn. at 579. "Aggrievement is established if there is a possibility,

> as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *Pomazi v. Conservation Commission*, 220 Conn. 476, 483, 600 A.2d 320 (1991).

Avalonbay Communities, Inc. v. Town of Orange, 256 Conn. 557, 568 (2001).

Plaintiffs allege that the defendant HANH violated the notice provisions of §8-44 of the Connecticut General Statutes. Neither this section of the statutes, nor any provision in Chapter 128 of the Connecticut General Statutes provides any authorization to bring a lawsuit for a violation of this section of the statutes.

As to the issue of "classical aggrievement:

> The test for aggrievement long recognized [by the Connecticut Supreme Court] is set forth in [its] decision in *State Medical Society v. Board of Examiners in Podiatry*, 203 Conn. 295, 524 A.2d 636 (1987). There [it] stated that [t]he fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision. . . . *Cannavo Enterprises, Inc. v. Burns*, 194 Conn. 43, 47, 478 A.2d 601 (1984); *Bakelaar v. West Haven,* [supra, 193 Conn. at 65]. Aggrievement is established if there is a possibility, as

> distinguished from a certainty, that some legally protected interest . . . has been adversely affected. *O'Leary v. McGuinness*, 140 Conn. 80, 83, 98 A.2d 660 (1953). *Hall v. Planning Commission*, 181 Conn. 442, 445, 435 A.2d 975 (1980) . . . [*State Medical Society v. Board of Examiners in Podiatry, supra*,] at 299-300. The determination of aggrievement presents a question of fact for the trial court and a plaintiff has the burden of proving that fact. *Mystic Marine life Aquarium, Inc. v. Gill*, 175 Conn. 483, 493, 400 A.2d 726 (1978) . . . *United Cable Television Services Corp. v. Dept. of Public Utility Control*, 235 Conn. 334, 342-43, 663 A.2d 1011 (1995).

Northeast Parking v. P & Z Corp. of Windsor Locks, 47 Conn. App. 284, 288 (1997).

> In determining whether a complaint is subject to dismissal for lack of jurisdiction, "a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." *Pamela B. v. Ment*, 244 Conn. 296, 308, 709 A.2d 1089 (1998).

Pinchbeck v. Dept. of Public Health, Supra at 208.

Construing the allegations in a manner most favorable to the pleader in the instant action, the court finds that the only allegations concerning the plaintiffs' standing are found in paragraph 9 of the Second Amended Complaint. In this paragraph the plaintiffs assert that they:

> . . . "[W]ere deprived of their due process of law and the opportunity afforded to them by

> statute to attend the public hearing and comment of the acquisition of the property."

The issues raised by the plaintiffs in their Second Amended Complaint concerning the opportunity to attend the public hearing and comment on the subject matter of the hearing go to the concerns of the general community at large and do not appear to demonstrate that the plaintiffs were affected by the violation of §8-44 C.G.S., in a specific and personal manner. The fact that the subject matter of the notice dealt with a property that is in close proximity of the plaintiffs' real property also does not give the plaintiffs standing. Unlike Chapter 124 of the Connecticut General Statutes wherein the state's legislature confers aggrievement status to individuals owning land located within a certain distance of the land that is the subject of the action (see §8-8(1) of the Connecticut General Statutes), this statute does not have this type of language and therefore it does not confer standing or aggrievement status on abutting property owners on the basis of the location of their residence or property.

The plaintiffs in this matter do not have standing to prosecute this action, the Court therefore does not have subject matter jurisdiction and the matter is therefore **dismissed**.

/s/ Richard A. Robinson
Richard A. Robinson, J
April 23, 2002

D.N. CV 97 0405939 S	:	SUPERIOR COURT
EDGEWOOD VILLAGE, INC, ET AL	:	J.D. of NEW HAVEN
	:	AT NEW HAVEN
V.	:	December 27, 2001
HOUSING AUTHORITY, ET AL	:	

MEMORANDUM OF DECISION, RE: MOTION #145 PLAINTIFFs' FOR SUMMARY JUDGMENT – LIABILITY ONLY

(Filed Dec. 27, 2001)

R.A. Robinson, J.

The matter that is currently before the Court concerns the Plaintiff's Motion for Summary Judgment. In light of plaintiff's Motion to Bifurcate the Motion for Summary Judgment (Motion #150) being granted on June 24, 2001 (Devlin J) this Court is only confronted with issues concerning liability at this time.

The plaintiff Edgewood Village, Inc., is a non-stock, non-profit corporation organized pursuant to Chapter 600 of the Connecticut General Statutes and is the owner of real property located at 139 West Avenue in the City of New Haven.

The plaintiff Edgewood Neighborhood Association Inc., is a Connecticut non-stock, non-profit corporation established for the purposes of the preserving and advancing the common good of residents and owners of property in the Edgewood neighborhood, bounded by West Park Avenue, Whalley Avenue, Winthrop and Chapel Street,

which neighborhood contains the real property referred to above.

The defendant Housing Authority of the City of New Haven (hereinafter "HANH") is a body corporate and politic existing under the provisions of § 8-40 of the Connecticut General Statutes.

The defendant Gracie White is a tenant of HANH and resides at 145 West Park Avenue, the property that is the subject of this action.

Pursuant to § 8-40 C.G.S., the defendant HANH is authorized, in part, to purchase or acquire real and personal property for use as a proposed "housing project" as that term is defined in § 8-39(i) C.G.S. This statute provides that:

> "Housing project" means any work or undertaking (1) to demolish, clear or remove buildings from any slum area, which work or undertaking may embrace the adaptation of such area to public purposes, including parks or other recreational or community purposes; or (2) to provide decent, safe and sanitary urban or rural dwellings, apartments or other living accommodations for families of low or moderate income, which work or undertaking may include buildings, land equipment, facilities and other real or personal property for necessary, convenient or desirable appurtenances, streets, sewers, water service, parks, site preparation, gardening, administrative, community, recreational, commercial or welfare purposes and may include the acquisition and rehabilitation of existing dwelling units or structures to be used for moderate or low rental units; or (3) to accomplish a combination of the foregoing. The term "housing project" also may

> be applied to the planning of the buildings and improvements, the acquisition of property, the demolition of existing structures, the construction, reconstruction, alteration and repair of the improvements and all other work in connection therewith and may include the reconstruction, rehabilitation, alteration, or major repair of existing buildings or improvements which were undertaken pursuant to parts II and VI of this chapter.

Section 8-44(d) of the Connecticut General Statutes provides that in addition to the powers granted by other sections of the Connecticut General Statutes, a Housing Authority shall have the power to:

> . . . [D]emise any dwelling, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this chapter to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; to purchase, lease, obtain options upon or acquire, by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein, provided no real property or interest therein shall be acquired for the site of a proposed housing project until the housing authority has held a public hearing concerning such site, notice of which has been published in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen nor less than ten days, and the last not less than two days, before such hearing; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or

> hazards; to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof, whether or not incurred by such authority, secured by mortgages on any property included in any of its housing projects. (emphasis added [sic])

Prior to March 1, 1997, the defendant HANH decided to acquire a parcel of real property located at 145 West Park Avenue in the City of New Haven. The property is a single family home located adjacent to the property owned by the plaintiff Edgewood Village, Inc. HANH intended to use said property as a "scattered site" housing project.

On March 1, 1997 and March 8, 1997, the defendant HANH published notices of a public hearing for March 11, 1997 regarding its potential acquisition of two properties, 63 Fulton Street and 145 West Park Avenue (the subject property). Said notices gave notice that pursuant to § 8-44 C.G.S., HANH was going to hold a public hearing on March 11, 1997. The subject of the proposed hearing was the acquisition of the subject property as well as the Fulton Street property.

The plaintiffs in the instant action assert that the defendant HANH did not comply with the provisions of § 8-44 C.G.S. when they published their notices concerning acquisition of the property located at 145 West Park Avenue, New Haven, CT. Specifically the plaintiffs assert that the notices published by HANH did not meet the time requirements specified in subsection 8-44(d) C.G.S., which provides in pertinent part that:

> . . . [N]o real property or interest therein shall be acquired for the site of a proposed housing project until the housing authority has held a public hearing concerning such site, notice of

> which has been published in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen *nor less than ten days*, and the last not less than two days, before such hearing . . . (emphasis added)

As a remedy for the alleged violation of § 8-44 C.G.S., the plaintiffs, pray for the following relief:

> 1. That the Superior Court enter an Order declaring the defendant Housing Authority of the City of New Haven's acquisition of 145 West Park Avenue void *abinito* because the Housing Authority lacked jurisdiction to take any action to acquire 145 West Park Avenue on March 11, 1997 and furthermore pursuant to 42 U.S.C. § 1437 p. et seq. and the regulations adopted thereunder Order the Housing Authority to dispose of the property to the plaintiff Edgewood Village, Inc. as a non-profit organization.[1]
>
> 2. That the plaintiffs be allowed to tax its costs as provided by statute.

Although the previous versions of the plaintiffs' Complaint explicitly included the word "injunction" in its claim for relief this, the most recent version of the Complaint

---

[1] It is important to note that during oral argument the plaintiffs clarified an issue that was raised in the defendants' Joint Objection to Plaintiffs' Second Amended Complaint as well as during oral argument concerning the language that was used in said Second Amended Complaint. The Plaintiffs provided that although the language of the document says that the plaintiffs are seeking "an Order *declaring* . . ." the plaintiffs are *not* seeking declaratory relief.

does not. However since the plaintiffs are seeking to have the Court to order the defendant HANH to dispose of the subject property, the Court's injunctive powers are necessarily implicated.

Section 17-45 of the Connecticut Practice Book concerns the proceedings for motions for summary judgment. It provides that:

> A motion for summary judgment shall be supported by such documents as may be appropriate, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions and the like. The motion shall be placed on the short calendar to be held not less than fifteen days following the filing of the motion and the supporting materials, unless the judicial authority otherwise directs. The adverse party [prior to the day the case is set down for short calendar] shall at least five days before the date the motion is to be considered on the short calendar file opposing affidavits and other available documentary evidence. Affidavits, and other documentary proof not already a part of the file, shall be filed and served as are pleadings.

The plaintiff filed the following documents along with its motion:

1) An Affidavit of Mark Roffman, President of Edgewood-Neighborhood Association Inc.

2) A copy of the HANH's notice in the March 1, 1997 New Haven Register.

3) A copy of the HANH's notice in the March 8, 1997 New Haven Register.

The affidavit of Mark Roffman provides in pertinent part that:

> 6. The two notices published in the *New Haven Register*, the first published on March 1, 1997 and the second published on March 8, 1997, attached hereto as Exhibit "A" and Exhibit "B", respectively, purportedly relate to the Housing Authority of New Haven's acquisition of 145 West Park Avenue, New Haven, Connecticut.
>
> 7. The first of the above-referenced legal notices dated March 1, 1997 was issued only nine (9) days prior to the March 11, 1997 public hearing concerning 145 West Park Avenue.

It is the law in this state that when the time requirements for notice are computed, the terminal days are excluded. *Lauver v. Planning & Zoning Comm. of Canterbury*, 60 Conn. App. 504, 507 (2000); *Lunt v. Zoning Board of Appeals*, 150 Conn. 532, 536 (1963). The plaintiff has provided the Court with evidence by way of a sworn affidavit that the notice in the matter at bar was published on March 1, 1997 and the meeting referred to in said notice was held on March 11, 1997. Excluding the terminal days, only nine days passed between the notice and the meeting. The defendant's [sic] have not provided any information by way of affidavits or other evidence to rebut plaintiffs' assertion.

The plaintiffs assert that the HANH did not have the authority to purchase the subject property. They propose as a remedy for the violation of state statute that the court order the defendant HANH to divest itself of the subject property by disposing of it to the plaintiff Edgewood Village, Incorporated as a non-profit organization. After

completing its review of the file and in light of the form of relief requested by the plaintiff, this court has become concerned as to the issue of whether the plaintiffs have standing to use this court to obtain the relief that they seek.

A review of the file indicates that the issue of standing was previously raised and addressed earlier by a judge of the superior court. See Motion #125 Memorandum of Decision, Re: Motion to Dismiss, May 24, 2000 (Thompson, J). The court found that the plaintiffs did not have standing to use this court to contest an alleged failure of HANH to follow its internal guidelines as to the location of scattered site housing and granted the motion to dismiss on the issues in the complaint concerning the same. However, the court denied the motion to dismiss as it related to issues concerning a violation of § 8-44.

> . . . "It is a basic principle of our law . . . that the [plaintiff] must have standing in order for a court to have jurisdiction to render a declaratory judgment." (Internal quotation marks omitted.) *Connecticut Assn. of Health Care Facilities, Inc. v. Worrell*, 199 Conn. 609, 613, 508 A.2d 743 (1986). "Standing is not a technical rule intended to keep aggrieved parties out of court; nor is it a test of substantive rights. Rather it is a practical concept designed to ensure that courts and parties are not vexed by suits brought to vindicate nonjusticiable interests and that judicial decisions which may affect the rights of others are forged in hot controversy, with each view fairly and vigorously represented. . . . Thus, standing does not hinge on whether the plaintiff will ultimately be entitled to obtain relief on the merits of an action, but on whether he is entitled to seek the relief." (Internal quotation marks omitted.)

Lewis v. Swan, 49 Conn. App. 669, 675, 716 A.2d 127 (1998); see also *Gay & Lesbian Law Students Assn. v. Board of Trustees*, 236 Conn. 453, 463, 673 A.2d 484 (1996).

Pinchbeck v. Dept. of Public Health, 65 Conn. App. 201, 205 (2001).

Our case law is clear that standing implicates the court's subject matter jurisdiction:

> . . . "Where a plaintiff lacks standing to sue, the court is without subject matter jurisdiction." *Steeneck v. University of Bridgeport*, 235 Conn. 572, 580, 668 A.2d 688 (1995). "[O]nce the question of lack of jurisdiction of a court is raised, [it] must be disposed of no matter in what form it is presented . . . and the court must fully resolve it before proceeding further with the case." (Internal quotation marks omitted.) *Salmon v. Dept. of Public Health & Addiction Services*, 58 Conn. App. 642, 649, 754 A.2d 828, cert. granted on other grounds, 254 Conn. 926, 761 A.2d 754 (2000).

Ardito v. Olinger, 65 Conn. App. 295, 300 (2001).

> The question of standing may be raised by any of the parties, or by the court, sua sponte, at any time during judicial proceedings. *In re Michelle G.*, 52 Conn. App. 187, 190, 727 A.2d 226 (1999), and cases therein cited.

Grabowski v. City of Bristol, 64 Conn. App. 448, 450 (2001).

> It is a fundamental rule that a court may raise and review the issue of subject matter jurisdiction at any time. *Sasso v. Aleshin*, 197 Conn. 87, 89, 495 A.2d 1066 (1985). Practice

Book 145 provides: "Any claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after the suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action."

"Subject matter jurisdiction involves the authority of the court to adjudicate the type of controversy presented by the action before it. 1 Restatement (Second), Judgments 11." *Craig v. Bronson*, 202 Conn. 93, 101, 520 A.2d 155 (1987). "'[A] court lacks discretion to consider the merits of a case over which it is without jurisdiction . . . .'" *Neyland v. Board of Education,* 195 Conn. 174, 181, 487 A.2d 181 (1985), quoting *Firestone Tire & Robber Co. v. Risjord*, 449 U.S. 368, 379, 101 S.Ct. 669, 66 L.Ed.2d 571 (1981). "The objection of want of jurisdiction may be made at any time . . . [a]nd the court or tribunal may act on its own motion, and should do so when the lack of jurisdiction is called to its attention." (Internal quotation marks omitted.) *Doe v. Heintz*, 204 Conn. 17, 35, 526 A.2d 1318 (1987); *Woodmont Assn. v. Milford*, 85 Conn. 517, 524, 84 A. 307 (1912). "The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage in the proceedings. . . . If at any point, it becomes apparent to the court that such jurisdiction is lacking, the appeal must be dismissed." *Laurel Park, Inc. v. Pac*, 194 Conn. 677, 679 n.1, 485 A.2d 1272 (1984); see also Practice Book 145.

Lewis v. Gaming Policy Board, 224 Conn. 693, 698 (1993).

As was previously stated, a coordinate judge of the superior court has already addressed the issue of standing.

Normally, the "law of the case doctrine" limits the review of a coordinate judge's decisions however the court's concerns in the current matter implicate it's subject matter jurisdiction and therefore the issue of standing must be revisited before the court may proceed.

> [Our appellate court] has held that when the jurisdiction of the trial court is implicated, an adjudicator is not bound by the law of the case doctrine, but should consider independently the issue of jurisdiction.
>
> *Westbrook v. Savin Rock Condominiums Assn., Inc.*, 50 Conn. App. 236, 240, 717 A.2d 789 (1998). "The law of the case is not written in stone but is a flexible principle of many facets adaptable to the exigencies of the different situations in which it may be invoked." (Internal quotation marks omitted.) Id.
>
> It is axiomatic that if the court lacks subject matter jurisdiction, it is without power to hear the matter before it. Therefore, the court must determine the jurisdictional issue "before it can move one further step in the cause; as any movement is necessarily the exercise of jurisdiction." (Internal quotation marks omitted.) *Blakenedy v. Commissioner of Correction*, 47 Conn. App. 568, 572.

Pinchbeck v. Dept. of Public Health, Supra at 207 (2001).

This court is concerned with the issue as whether the plaintiffs have standing to bring an action for the violation of the notice provisions of § 8-44 of the Connecticut General Statutes.

> . . . "Standing is established by showing that the party claiming it is authorized by statute to bring suit or is classically aggrieved. . . . The fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific, personal and legal interest in [the subject matter of the challenged action], as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the [challenged action]." (Citation omitted; internal quotation marks omitted.) *Steeneck v. University of Bridgeport*, supra, 235 Conn. 579. "Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected." (Internal quotation marks omitted.) *Pomazi v. Conservation Commission*, 220 Conn. 476, 483, 600 A.2d 320 (1991).

Avalonbay Communities, Inc. v. Town of Orange, 256 Conn. 557, 568 (2001).

Plaintiffs allege that the defendant HANH violated the notice provisions of § 8-44 of the Connecticut General Statutes. Neither this section of the statutes, nor any provision in Chapter 128 of the Connecticut General Statutes provides any authorization to bring a lawsuit for a violation of this section of the statutes. This being the case, the court cannot find that the plaintiffs are statutorily aggrieved. The issue then is whether or not the plaintiffs are "classically" aggrieved.

The instant action concerns a defect in the noticing of the public hearing that took place on March 11, 1997. Instead of giving notice "not less than ten days" as required by statute, the defendant HANH gave notice nine days before the hearing. In order for the plaintiffs to be classically aggrieved, they must demonstrate not only that they have been injured by the statutory violation, they must demonstrate that they have a specific personal and legal interest in the subject matter of the alleged violation of statutory notice.

> "The test for aggrievement long recognized [by the Connecticut Supreme Court] is set forth in [its] decision in *State Medical Society v. Board of Examiners in Podiatry*, 203 Conn. 295, 524 A.2d 636 (1987). There [it] stated that [t]he fundamental test for determining aggrievement encompasses a well-settled twofold determination: first, the party claiming aggrievement must successfully demonstrate a specific personal and legal interest in the subject matter of the decision, as distinguished from a general interest, such as is the concern of all members of the community as a whole. Second, the party claiming aggrievement must successfully establish that this specific personal and legal interest has been specially and injuriously affected by the decision. . . . *Cannavo Enterprises, Inc. v. Burns*, 194 Conn. 43, 47, 478 A.2d 601 (1984); *Bakelaar v. West Haven*, [supra, 193 Conn. 65]. Aggrievement is established if there is a possibility, as distinguished from a certainty, that some legally protected interest . . . has been adversely affected. *O'Leary v. McGuinness*, 140 Conn. 80, 83, 98 A.2d 660 (1953). *Hall v. Planning Commission*, 181 Conn. 442, 445, 435 A.2d 975 (1980). . . . [*State Medical Society v. Board of Examiners in Podiatry, supra*,] 299-300.

> The determination of aggrievement presents a question of fact for the trial court and a plaintiff has the burden of proving that fact. *Mystic Marinelife Aquarium, Inc. v. Gill*, 175 Conn. 483, 493, 400 A.2d 726 (1978). . . . *United Cable Television Services Corp. v. Dept. of Public Utility Control*, 235 Conn. 334, 342-43, 663 A.2d 1011 (1995).

Northeast Parking v. P. & Z. Com. of Windsor Locks, 47 Conn. App. 284, 288 (1997).

> In determining whether a complaint is subject to dismissal for lack of jurisdiction, "a court must take the facts to be those alleged in the complaint, including those facts necessarily implied from the allegations, construing them in a manner most favorable to the pleader." *Pamela B. v. Ment*, 244 Conn. 296, 308, 709 A.2d 1089 (1998).

Pinchbeck v. Dept. of Public Health, Supra at 208.

Construing the allegations in a manner most favorable to the pleader in the instant action, the court finds that the only allegations concerning the plaintiffs' standing are found in paragraph 9 of the Second Amended Complaint. In this paragraph the plaintiffs assert that they:

> . . . "[W]ere deprived of their due process of law and the opportunity afforded to them by statute to attend the public hearing and comment of the acquisition of the property."

The issues raised by the plaintiffs in their Second Amended Complaint concerning the opportunity to attend the public hearing and comment on the subject matter of the hearing go to the concerns of the general community at

large and do not appear to demonstrate that the plaintiffs were affected by the violation of § 8-44 C.G.S., in a specific and personal manner. The fact that the subject matter of the notice dealt with a property that is in close proximity of the plaintiffs' real property also does not give the plaintiffs' standing. Unlike Chapter 124 of the Connecticut General Statutes wherein the state's legislature confers aggrievement status to individuals owning land located within a certain radius of the land that is the subject of the action (see § 8-8(1) of the Connecticut General Statutes). This statute does not have this type of language and therefore it does not appear that it was the legislature's intent to confer standing or aggrievement status on abutting property owners merely on the basis of the location of their residence or property.

In addition to the foregoing, the request for relief demonstrates the plaintiffs may lack standing in this matter. The plaintiffs do not request declaratory relief as to whether the hearing was properly held or whether the issues discussed at the hearing were properly before HANH, or even if the decision to acquire the subject property was valid or void abinitio.[2] Instead the plaintiffs demand that the court order the defendant HANH to "dispose of the property to the plaintiff Edgewood Village, Inc. as a non-profit organization." It should be noted that this is the first time that this particular form of relief appears in this matter. It was not presented in the original complaint, the amended complaint or in the related matter that was dismissed and cited in the court's memorandum

[2] See footnote number one, plaintiffs stated during oral argument that they are *not* seeking declaratory relief.

Re: Motion to Dismiss #125. *Edgewood Village v. Housing Authority of New Haven*, CV 97-0402408 (Sullivan, J). It therefore could not have been a part of the considerations of the court in its review of the issue of the plaintiffs' standing before this time.

The issue of the court's subject matter jurisdiction must be addressed before it can proceed any further. In light of the foregoing, the plaintiff's Motion for Summary Judgment is denied without prejudice at this time. Whereas the court has raised the issue of the subject matter jurisdiction *sua sponte*, it will give the parties the opportunity to address the issues that it has raised before making a decision as to its jurisdiction. The parties are therefore ordered to address the issues raised by the court by filing simultaneous memorandum (as well as any supporting documentation that the parties deem necessary) supporting their positions on or before January 31, 2002.

/s/ Richard A. Robinson
Richard A. Robinson
December 27, 2001

SUPREME COURT NO. 16926	:	SUPREME COURT
EDGEWOOD VILLAGE, INC. and EDGEWOOD NEIGHBORHOOD ASSOCIATION, INC.	:	STATE OF CONNECTICUT
V.	:	
HOUSING AUTHORITY OF THE CITY OF NEW HAVEN	:	AUGUST 14, 2003

MOTION FOR RECONSIDERATION EN BANC

Pursuant to §71-5 of the Connecticut Rules of Appellate Procedure, the plaintiffs, Edgewood Village, Inc. and Edgewood Neighborhood Association, Inc. ("Edgewood") hereby move for reconsideration *en banc*. The basis for the plaintiff's motion is to secure and maintain uniformity of decisions concerning timely and proper notice of public hearings, such as that called for under Connecticut General Statutes §8-44. Furthermore, the Supreme Court's decision in the above-captioned matter involves an important question of whether a nearby property owner (or anyone) has standing under classical aggrievement standards to assert due process violations by an administrative agency which admittedly fails to follow statutory notice requirements for a public hearing prior to acquiring property for public purposes.

A. BRIEF HISTORY OF CASE

By decision officially released August 5, 2003, the Supreme Court affirmed the Trial Court's (Robinson, J.) decision dismissing the plaintiff's challenge to the defendant Housing Authority of the City of New Haven's

("HANH") acquisition of 145 West Park Avenue, New Haven, Connecticut. This case came to the Supreme Court upon transfer, *sua sponte*, from the Appellate Court. Edgewood appealed the defendant's acquisition of 145 West Park Avenue after a public hearing was held in 1997 which was based on defective legal notices. Initially, the Trial Court (Munro, J.) found the notices defective and was in the process of addressing the remedy when the case was transferred to another judge (Robinson, J.) who dismissed the case for lack of aggrievement.

Admittedly, HANH did not follow Connecticut General Statutes §8-44(d)'s requirement of publishing legal notice at least ten days prior to the public hearing to consider acquisition of property for public housing. However, despite the legal insufficiency of HANH's legal notice, the Connecticut Supreme Court concluded:

> [T]he plaintiffs have not demonstrated that their interest in attending the hearing is a specific and legal interest. Although the plaintiffs reside next to or near the property at issue, the housing scheme does not reflect concerns that mere proximity to public housing would bestow a specific and legal interest due to the defective notice. (cites omitted)
>
> *Edgewood* at p. 6.

Respectfully, the Supreme Court's decision makes C.G.S. Section 8-44(d)'s public hearing requirements a nullity. In fact, the decision invites local agencies to ignore statutory requirements for a public hearing. If the adjoining property owner, such as Edgewood, who has concerns over its own neighborhood which are obviously greater than property owners on the other

side of town has no standing to challenge the validity of the public hearing, no one can ever challenge a housing authority's public hearing process.

B. SPECIFIC FACTS

The Supreme Court's attention is respectfully drawn to its own discussion of the legislative history which preceded adoption of Connecticut General Statutes §8-44(d). This legislative history indicates that the legislature intended a meaningful and plenary public hearing process.

As noted in footnotes 8, 9 and 10 of the instant decision, the purpose of Senate Bill No. 671, entitled "An Act Concerning Public Hearings on Sites of Proposed Moderate Rental Housing Projects," was to insure full public participation. Pt. II, 1957 Sess.; p. 532-35. As Senator Lynch noted:

> "This bill calls for public hearings before the development commissions can change the geography of existing neighborhoods. We have found that people who have been established in a certain neighborhood have found there is a redevelopment going on which they knew nothing about before. They made an appeal to the commission and gotten nowhere . . . "
>
> *Id.* at p. 533

Responding to a question about what happens after the hearing, Senator Lynch noted "If the people come in [the housing authority] will listen to them." *supra*, p. 533. Representative Fahey noted that "it [is] only the right of the people to have a public hearing. An aroused public opinion will be strength enough." *Id.*, Conn. Joint Standing Committee Hearings, p. 533. Thus, the Connecticut

Legislature clearly intended that people "established in a certain neighborhood" have a right to be aware of changes in their midst and address those changes before they are made.

Edgewood, at the trial court level, challenged not only the illegal timing of the public hearing notices, but also the substance of those legal notices. As pointed out in paragraph eight (8) of Edgewood's August 15, 2001 Second Amended Complaint, HANH's legal notices failed to reference "possible acquisition by the Authority of the following site **for development of federally subsidized low-income housing**" as required by Connecticut General Statutes §8-44 (emphasis added). Moreover, seven (7) out of the eight (8) prior legal notices by HANH for other scattered site properties supplied that specific statutory language. The instant legal notice omitted this significant language.

This case also presents itself in a unique procedural context. The Trial Court (Munro, J.) had already denied HANH's motion for summary judgment and was in the process of deciding Edgewood's motion for summary judgment. In fact, the Trial Court (Munro, J.) had found that HANH's legal notice was defective and was prepared to address the type of relief, which resulted in Edgewood's August 15, 2001 Second Amended Complaint. When the parties returned to address the subject to relief, Judge Munro recused herself and the case was transferred to Judge Robinson. Thus, the Supreme Court's review concerns the actions of a subsequent Superior Court judge who raised subject matter concerns after liability had already been resolved in the plaintiffs' favor. In fact, the concerns over subject matter jurisdiction have already

been twice addressed and twice rejected by coordinate judge of the Superior Court.

C. LEGAL GROUNDS

The Supreme Court's decision fails to acknowledge Edgewood's due process right to persuade a housing authority at a properly noticed hearing that the subject housing site was inappropriate for public housing. Adequate legal notice is the lynchpin to an agency's jurisdiction to take any action in the first instance. The present decision effectively overrules *Maher v. Town Planning and Zoning Commission of Stratford*, 154 Conn. 420 (1967) which held that notices must comply with statutory requirements or the decisions rendered thereunder are void. In the case of *Dupont v. Planning & Zoning Commission of Stratford*, 156 Conn. 213 (1968), the Connecticut Supreme Court held that a board or agency's decision is void *ab initio* if the legal notice is improper because proper notice is jurisdictional. The present decision is in direct conflict with those two cases.

Similarly in *DiCamillo v. Calmiro*, 174 Conn. 351 (1978), the legal notice which did not comply with the "not less than ten days" requirement, resulted in voiding the agency's action. The Connecticut Supreme Court reached similar conclusions in *Lunt v. Zoning Board of Appeals*, 150 Conn. 532 (1963) and *Treat v. Town Planning and Zoning Commission*, 145 Conn. 136 (1958). In *Lunt*, Wallingford's legal notice failed to comply with Section 8-7's "not less than" ten day requirement which resulted in the court invalidating a decision to change a nonconforming use. In *Treat*, a notice published on October 20th for

an October 30th public hearing was defective because "not less than" ten days intervened.

In short, whether for zoning or other administrative actions, the present decision undermines the consistent position of the Connecticut Supreme Court that failure to follow legal notice requirements for a public hearing invalidates the agency's actions. In addition, even if the housing authority had the discretion to ultimately ignore Edgewood's input, the majority decision gives a neighborhood property owner no remedy whatsoever should the agency decide not to hold any public hearing! This point was noted in the concurring opinion of Justice Borden where he stated:

> "I would conclude, therefore, that, unlike this case, where a housing authority does not hold *any* hearing, a property owner who therefore was completely deprived of his right to persuade the housing authority at such a hearing, and who could otherwise establish harm, such as by way of evidence of a loss of value of his or her property, *might* have a protected interest for due process purposes."
>
> *Edgewood Village, supra*, p. 12

If an administrative agency can ignore the legal notice requirements of a public hearing, then the present decision erases the requirement to hold such a hearing under §8-44(d).

CONCLUSION:

It is respectfully submitted that the instant Motion for Reconsideration En Banc to review the Connecticut Supreme Court's decision published August 5, 2003,

should be granted. Evaluating the plaintiff's complaint in the context of the legislative history of Connecticut General Statutes §8-44, the defendant housing authority must follow the statute's legal notice requirements. As noted by Senator Lynch at the time §8-44 was adopted, a neighborhood has a due process interest in expressing its opinion concerning housing projects in its area. To conclude no one has standing to challenge legal notice requirements, essentially redrafts the statute by eliminating the public hearing requirement.

THE APPELLANTS
Edgewood Village, Inc. and
Edgewood Neighborhood
Association, Inc.

By: /s/ Thomas E. Crosby
Thomas E. Crosby, Esq.
Crosby and Cronan, LLC
Their Attorney
1291 Boston Post Road,
Suite #201
Madison, Connecticut 06443
(203) 245-0332
Juris No. 419463

CERTIFICATION

Pursuant to Connecticut Practice Book Appellate Rule 62-7, the undersigned hereby certifies that the original and fifteen (15) copies of the Plaintiffs' Motion for Reconsideration En Banc have been filed with the Appellate Court on August 14, 2003 and that a copy of the same was mailed via first class mail, postage prepaid, on this 14th day of August, 2003 to the following:

Shelley A. White, Esq.
New Haven Legal Assistance Assoc.
426 State Street,
New Haven, Connecticut 06510
Telephone: 203-946-4811
Facsimile: 203-498-9271

Marisa A. Bellair, Esq.
Lynch, Traub, Keefe & Errante, P.C.
52 Trumball Street
New Haven, CT 06510
Telephone: 203-787-0275
Facsimile: 203-782-0278

Edgewood Village, Inc. and
Edgewood Neighborhood Association, Inc.
765 Elm Street
New Haven, Connecticut 06511
Telephone: 203-777-2200
Facsimile: 203777 [sic]-7198

The Honorable Richard A. Robinson
New Haven Superior Court
235 Church Street
New Haven, Connecticut 06510

/s/ Thomas E. Crosby
Thomas E. Crosby, Esq.

CERTIFICATION

I hereby certify that this Motion for Reconsideration *En Banc* is printed in Arial 12 Point Font, and as such, complies with §67-2 of the Practice Book.

/s/ Thomas E. Crosby
Thomas E. Crosby, Esq.

SUPREME COURT

STATE OF CONNECTICUT

NO. SC 16926

EDGEWOOD VILLAGE, INC., et al.

v.

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN ET AL. : **SEPTEMBER 9, 2003**

ORDER

THE MOTION OF THE PLAINTIFFS EDGEWOOD VILLAGE, INC., AND EDGEWOOD NEIGHBORHOOD ASSOCIATION, INC., FILED AUGUST 15, 2003, FOR RECONSIDERATION EN BANC, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED **DENIED**.

SULLIVAN C.J., AND NORCOTT, J., DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THE MOTION.

BY THE COURT,

/s/ Michelle T. Angers
CHIEF CLERK

NOTICE SENT: SEPTEMBER 9, 2003
CROSBY & CRONAN, LLC
LYNCH, TRAUB, KEEFE & ERRANTE, P.C.
SHELLEY A. WHITE
CLERK, NEW HAVEN J.D. (CV97-0405939)
HON. RICHARD A. ROBINSON
RJD

Sec. 8-44. Powers of authority. (a) An authority shall constitute a public body corporate and politic, exercising public powers and having all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following enumerated powers in addition to others granted by any provision of the general statutes: (1) To sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; and to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this chapter to carry into effect the powers and purposes of the authority; (2) within its area of operation, to prepare, carry out, acquire, lease and operate housing projects and to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof either directly or in the form of loans or other similar assistance to developers, all such housing projects where families with children are eligible for occupancy to contain reasonably adequate outdoor playground areas; (3) to arrange or contract for the furnishing by any person or agency, public or private, of services, privileges, works or facilities for, or in connection with, a housing project or the occupants thereof; (4) to demise any dwellings, houses, accommodations, lands, buildings, structures or facilities embraced in any housing project and, subject to the limitations contained in this chapter, to establish and revise the rents or charges therefor; to own, hold and improve real or personal property; **to purchase, lease, obtain options upon or acquire, by gift, grant, bequest, devise or otherwise, any real or personal property or any interest therein, provided no real property or interest therein shall be acquired for the site of a proposed**

housing project until the housing authority has held a public hearing concerning such site, notice of which has been published in the form of a legal advertisement in a newspaper having a substantial circulation in the municipality at least twice at intervals of not less than two days, the first not more than fifteen nor less than ten days, and the last not less than two days, before such hearing; to insure or provide for the insurance of any real or personal property or operations of the authority against any risks or hazards; to procure insurance or guarantees from the federal government of the payment of any debts or parts thereof, whether or not incurred by such authority, secured by mortgages on any property included in any of its housing projects; (5) to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursements, in investments legal for mutual savings banks, provided that the provisions of subdivision (2) of subsection (n) of section 36-96 shall not be applicable to any such investment, and to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled; (6) within its area of operation, to investigate living, dwelling and housing conditions and the means and methods of improving such conditions; to determine where slum areas exist or where there is a shortage of decent, safe and sanitary dwelling accommodations for families of low and moderate income; to make studies and recommendations relating to the problem of clearing, replanning and reconstructing slum areas, and the problem of providing dwelling accommodations for families of low and moderate income, and to cooperate with the municipality or the state or any political subdivision thereof in action taken in connection with such problems; (7) to promote the creation and preservation of

housing for low and moderate income persons and families, either directly or through an agency or instrumentality designated or appointed by the authority, by lending or otherwise making available to developers the proceeds from the sale of obligations which are tax-exempt pursuant to the provisions of the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, or Section 11(b) of the United States Housing Act of 1937, as amended, or any successor provisions amendatory or supplementary thereto, provided no such obligations or other notes or securities issued by any agency or instrumentality designated or approved by the authority pursuant to the provisions of this subdivision, shall create or imply any indebtedness of any kind on the part of the housing authority, the state, or any political subdivision thereof; and (8) to exercise all or any part or combination of powers herein granted. No provision of law with respect to the operation or disposition of property by other public bodies shall be applicable to an authority unless the General Assembly specifically so states.

Page C10 New Haven Register, Saturday, March 1, 1997

LEGALS

NOTICE OF PUBLIC HEARING

Notice is given, pursuant to Connecticut General Statute Section 8-44 that the Board of Commissioners of the Housing Authority of the City of New Haven (the Authority) will hold a public hearing at 5:30 PM on Tuesday, March 11, 1997 at Katherine Brennan School, 200 Wilmot Rd., New Haven, CT to receive public comment on the potential acquisition by the Authority of an existing 1-unit property at 145 West Park Ave.; and an existing 1-unit property at 53 Fulton St. (which is proposed to be demolished, and the land combined with adjacent property already owned by the Authority for a new construction development).

Authority staff and supplemental materials are available at 360 Orange St. 3rd floor, 946-2812 to assist persons with disabilities. The Authority's TTY/TDD phone number is 946-2999. The Housing Authority is an equal opportunity housing agency.

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN
By: Bryan N. Anderson, Executive Director
Date: February 21, 1997
2RG401100

New Haven Register, Saturday, March 8, 1997 Page D7

NOTICE OF PUBLIC HEARING

Notice is given, pursuant to Connecticut General Statute Section 8-44 that the Board of Commissioners of the Housing Authority of the City of New Haven (the Authority) will hold a public hearing at 5:30 PM on Tuesday, March 11, 1997 at Katherine Brennan School, 200 Wilmot Rd., New Haven, CT to receive public comment on the potential acquisition by the Authority of an existing 1-unit property at 145 West Park Ave.; and an existing 1-unit property at 53 Fulton St. (which is proposed to be demolished, and the land combined with adjacent property already owned by the Authority for a new construction development).

Authority staff and supplemental materials are available at 360 Orange St. 3rd floor, 946-2812 to assist persons with disabilities. The Authority's TTY/TDD phone number is 946-2999. The Housing Authority is an equal opportunity housing agency.

HOUSING AUTHORITY OF THE CITY OF NEW HAVEN
By: Bryan N. Anderson, Executive Director
Date: February 21, 1997
2RG401100